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Cover: Batcu Alexandru

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Director: Mărcău Flavius-Cristian

Contact:

Mail: flaviusmarcau@yahoo.com

Tel: +40766665670

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EUROPEAN REFUGEE CRISIS: THE PUBLIC HEALTH DIMENSION

Anda – Ioana CURTA¹

ABSTRACT

EUROPE, AS WELL AS THE COUNTRIES IN SYRIA'S NEIGHBORHOOD, IS CURRENTLY EXPERIENCING AN UNPRECEDENTED INFLUX OF REFUGEES, ASYLUM SEEKERS AND OTHER MIGRANTS, HAVING TO FACE THE BIGGEST MIGRANT CRISIS SINCE WORLD WAR II. ONE ASPECT OF THE CURRENT REFUGEE CRISIS THAT RECEIVES LITTLE MEDIA COVERAGE IS THE NEED FOR HEALTH SERVICES OF THIS PARTICULAR POPULATION AND, AT THE SAME TIME, THE PUBLIC HEALTH ISSUES FACED BY THE VARIOUS COUNTRIES ALONG THEIR ROAD TO SAFETY. PROVIDING HEALTH CARE FOR A POPULATION THAT MOVES THROUGHOUT EUROPE, BEING PASSED FROM ONE COUNTRY TO THE OTHER, IS A HUGE CHALLENGE FOR EUROPE'S HEALTH SYSTEMS. THIS IS ESPECIALLY PROBLEMATIC NOT SOLELY FOR COUNTRIES HAVING TO DEAL WITH A LARGE NUMBER OF REFUGEES ALONG A SHORT PERIOD OF TIME, BUT ALSO FOR COUNTRIES HAVING HEALTH SYSTEMS THAT BARELY RESPOND TO THEIR OWN POPULATION NEEDS. ARE MIGRANTS REALLY POSING A THREAT TO THE HEALTH SECURITY OF THE DOMESTIC POPULATION? ARE EUROPE'S HEALTH SYSTEMS OVERWHELMED? WILL MIGRATION CRISIS BECOME A PUBLIC HEALTH DISASTER? THESE ARE THE QUESTIONS THAT WE WILL TRY TO ANSWER IN THIS PAPER.

KEY WORDS: MIGRATION, PUBLIC HEALTH, HEALTH SYSTEMS, CRISIS.

INTRODUCTION

The 2016 UN high-level Summit for Refugees and Migrants in New York² provided a historic opportunity for world leaders to engage in responding to the public health dimension of mass migration.

According to the Office of the United Nations High Commissioner for Refugees (UNHCR), more than 65 million people are estimated to be displaced worldwide,³ with over two million asylum applications registered by European countries starting with January 2015. Since 2015, almost ten thousand refugees and migrants are known to have died or gone

¹ Anda-Ioana Curta, PhD, Lecturer at Babeş-Bolyai University, Faculty of History and Philosophy, Department of International Studies and Contemporary History, e-mail: anda_curta@yahoo.com

² UN General Assembly. *New York Declaration for Refugees and Migrants*. A/71/L.1 (Sept 13, 2016). http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1 (accessed May 17, 2017).

³ UNHCR. *Global trends: forced displacement in 2015*. United Nations High Commissioner for Refugees, Geneva; 2015, accessed May 17, 2017. <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>

missing at sea⁴. The influx of refugees, asylum seekers and migrants into the region is not just an isolated crisis but an ongoing reality that will affect European countries for some time to come, with medium and long term security, economic and health implications.

Despite the magnitude of this process and its potential for changing health patterns, the national response has been very diverse. Unfortunately, it has been more or less an example of national and international benign neglect⁵. The preoccupation with quotas has, too often, ignored that each refugee is an individual, a person with a story to tell, many of whom have experienced the worst living conditions in their countries of origin and of transit. Even when they reach the safety Europe can provide, their ordeal continues, many of the refugees lacking access to basic primary health care, including maternal and child health services, and, for those with non-communicable diseases, lacking the continuity of care on which their health depends. On the other hand, assuming they come from countries with failing health systems, they are a peril for the health security of the domestic populations. The paper examines the possibility of a balance between these two approaches.

MIGRATION AND HEALTH

The migration and public health nexus is not a new issue on the political or health agendas across the world. The lack of visibility regarding this topic is due to the lack of accurate numbers, to the difficulty to analyze data sets with diverse variables: the very definition of migrants differs from country to country, statistics regarding migrants, since the real number of irregular and illegal migrants is unknown, are of approximate value, and, moreover, high quality data on health determinants, health status and health service utilization by migrants are not available in most EU countries.⁶ The specific health needs of migrants are poorly understood, language barriers make communication between health care providers and migrant patients very difficult, and, not least, health systems are not prepared to respond adequately. The situation gets more complicated by the problems migrants face in realizing their human rights, in accessing social services, and in engaging in low paid and often dangerous jobs, with the most acute challenges being faced by undocumented migrants, trafficked persons and asylum-seekers.⁷

Relationships between disease, travel and migration have historical roots that continue to haunt modern public health concerns. Based on the principles of protecting the recipient population through policies of exclusion directed at the migrant or arriving traveler, traditional approaches dealing with migrant health have focused on the recognition, identification and management of specific diseases of displaced populations at the time and place of their arrival.⁸ Derived from the historical practices of quarantine, similar processes continue in a modern context through immigration medical screening and border control practices intended to reduce threats to public health or to limit potential impacts on healthcare

⁴“Refugees/Migrants Emergency Response – Mediterranean”, UNHCR, Geneva 2017, accessed May 17, 2017, <http://data.unhcr.org/mediterranean/regional.php>

⁵Manuel Carballo, *et al*, “Evolving migrant crisis in Europe: implications for health systems”, in *The Lancet Global Health*, 2017, Volume 5, Issue 3, e252 - e253, accessed May 17, doi: 10.1016/S2214-109X(17)30040-2

⁶ Mark B. Padilla and Jose Pereira-Miguel, “Health and migration in the EU: building a shared vision for action”, in Ana Fernandes, Jose Pereira-Miguel. (eds), *Health and Migration in the European Union: Better Health for All in an Inclusive Society*. (Lisbon: Instituto Nacional de Saude Doutor Ricardo Jorge, 2009): 15–22.

⁷ Bernd Rechel, Philipa Mladovsky, Walter Devillé, Barbara Rijks, Roumyana Petrova-Benedict and Martin McKee, “Migration and health in the European Union: an introduction”, in Bernd Rechel, Philipa Mladovsky, Walter Devillé, Barbara Rijks, Roumyana Petrova-Benedict and Martin McKee (eds.), *Migration and Health in the European Union*, (Open University Press, McGraw Hill, 2011): 5

⁸ Gian Franco Gensini, Magdi H. Yacoub, Andrea A. Conti, “The concept of quarantine in history: from plague to SARS”, *Journal of Infection* 49 (2004): 257-261.

services.⁹ International migration, which is both part and consequence of globalization, increasingly affects health in migrant source, transit, and recipient nations.¹⁰ Population mobility becomes a significant determinant of future health threats and risks for all regions of the world due to the number of people on the move, as well as the diversity and disparity of population characteristics between source, transit, and recipient destinations. Identifying threats related to migrant populations has been driven by historical outbreaks of transmissible infectious diseases of public health significance, such as plague and cholera. The flow of populations between locations with widely different health determinants and outcomes creates situations in which locally defined public health threats and risks assume international or global relevance, as proved by recent epidemics of SARS (Severe Acute Respiratory Syndrome), the novel type A H1N1 Influenza¹¹ or Ebola.

The combination of biological, behavioral, environmental, and socioeconomic determinants of health lead to major differences in health status of different populations. When a population moves from one country to another, characterized by different health patterns, it allows for the transfer of its characteristics between locations. This has far-reaching implications for health maintenance and promotion, disease prevention, intervention and health-services management, and education and training programs. In the public health community attention is traditionally drawn toward the effects of communicable diseases associated with migration. In the sphere of infectious diseases, population mobility is one of the underlying factors in the emergence and reemergence of diseases of international public health importance as shown by the serious outbreaks of the Twenty-first Century.¹² Migrant source and destination countries may exhibit differences for noninfectious diseases and conditions, as well, further complicating the problem as migrant-receiving nations are sometimes required to respond to adverse health outcomes that originate beyond their health planning considerations. Moreover, migrants who are subjected to legal, social, or economic isolation may develop diseases much different from those seen in the local population. Therefore, health interventions and attempts to mitigate adverse health outcomes in migrant communities may require approaches that differ from those required by the locally born community.¹³

As economic and social environments have the capacity of rapidly changing in our modern world, disparities in health determinants and disease outcomes can also change over time, thus adding an important dimension of complexity to the analysis of migrant health concerns. If those variations affect health determinants, the consecutive changes in health outcomes can be observed over relatively short periods of time. For example, in the thirty years following 1965, the difference between life expectancy for males in the United

⁹ Centers for Disease Control and Prevention: *Technical Instructions for the Medical Examination of Aliens revised 2016*. Atlanta, Georgia https://www.cdc.gov/immigrantrefugeehealth/laws-regs/revisions-medicalscreening/medical_examination_alien.html (accessed May16, 2017)

¹⁰ Brian D Gushulak, J Weekers, Douglas W MacPherson, "Migrants and emerging public health issues in a globalized world: threats, risks and challenges, an evidence-based framework", *Emerging Health Threats Journal* 2(2010):e10, accessed May 26, 2017, doi: 10.3134/ehth.09.010

¹¹Mark A. Miller, Cecile Viboud, Marta Balinska, Lone Simonsen , "The signature features of influenza pandemics – implications for policy", *New England Journal of Medicine* 360 (2009):2595–8

¹²Joshua Lederberg, Robert E. Shope, and Stanley C. Oaks, Jr (eds.), *Institute of Medicine, Committee on Emerging Microbial Threats to Health. Emerging Infections: Microbial Threats to Health in the United States*. (National Academy Press: Washington, DC, 1992): 42.

¹³Mary Catherine Beach, Tiffany L Gary, Eboni G Price, Karen Robinson, Aysegul Gozu, Ana Palacio *et al.*, "Improving health care quality for racial/ethnic minorities: a systematic review of the best evidence regarding provider and organization interventions", *BioMed Central Public Health* 6 (2006):104

Kingdom and Russia increased by more than ten years.¹⁴ Basic public health improvements such as providing safe drinking water, improved sewerage and housing can significantly reduce the occurrence of diseases of major public health impact in less than a generation,¹⁵ while conflict, environmental change, natural disasters and population growth can lead to adverse health outcomes and increased rates of mortality over short periods of time.¹⁶

Health systems in migrant-receiving nations have to face several challenges ranging from early recognition of the diversity and disparity components of the arriving population to access to care for these migrant populations. Health practices may differ significantly between source and host nations, particularly in health-promotion strategies, approaches to disease screening (for hypertension, diabetes in pregnancy, different forms of cancer, etc.) or infectious disease prevention and control measures and outbreak response. Many economically developed countries have long-standing and effective public health and disease-control programs. Through sanitation, vaccination, antibiotic therapy, improved healthcare and public health services, infections that were historically significant causes of illness and death have dramatically decreased in numbers or have already been eliminated. The eradication of smallpox in the seventies of the last century has led to a global effervescence in trying to develop similar programs of elimination of other infectious scourges and today several important communicable diseases, such as tuberculosis, measles or polio, have reached the point where they are no longer of public health significance in developed areas of the world. The picture of the developing world is significantly different, thus creating enormous differences in the prevalence of certain conditions among different areas of the globe. In a world that is on the move, migrants crossing these prevalence gaps can become the source for outbreaks of these diseases.¹⁷ For example, the occurrence of tuberculosis in the high-income world in most of the cases is related to migration.¹⁸

Epidemiological disparities between the developed and less developed world are also observed for chronic diseases. Access to and utilization of health services may also display a different pattern between arriving and recipient population. Migrants from less developed regions of the world may have had less access to preventive care, health promotion programs, diagnostic or therapeutic interventions, therefore they may present with disease in more advanced stages than normally observed in the destination country.¹⁹

Traditional responses to the health challenges of migration, like medical screening, quarantine, and isolation in order to timely identify and, thus, reduce, by means of exclusion, the impact of health disparities in arriving mobile populations become very limited in their purpose.²⁰ Despite their apparent importance from a legal or administrative perspective, they

¹⁴Evgheni M Andreev, Ellen Nolte, Vladimir M Shkolnikov, Elena Varavikova, Martin McKee: "The evolving pattern of avoidable mortality in Russia", *International Journal of Epidemiology* 32 (2003):437-446.

¹⁵Mukul Kulshrestha, Atul Kumar Mittal, "Diseases associated with poor water and sanitation: hazards, prevention, and solutions", *Review on Environmental Health* 18 (2003):33-50.

¹⁶Michael J Toole, Ronald J. Waldman, "The public health aspects of complex emergencies and refugee situations", *Annual Review of Public Health* 18 (1997):283-312

¹⁷Alan R. Hinman, Jane A. Rooney, Jackson D. Milton, Robert L. Hackler, Joanna H. Harris, Debra Reynolds Margaret Tanner, Elizabeth Taylor, "The largest outbreak of measles in the United States during 1999: imported measles and pockets of susceptibility", *Journal of Infectious Diseases* 189, Supplement 1 (2004):S78-80, accessed May 19 2017, doi: 10.1086/377697

¹⁸Lobato MN, Mohamed MH, Hadler JL, "Tuberculosis in a low incidence US area: local consequences of global disruptions", *International Journal of Tuberculosis and Lung Disease* 12 (2008):506-12.

¹⁹Brian D Gushulak, Douglas W MacPherson, "The basic principles of migration health: Population mobility and gaps in disease prevalence", *Emerging Themes in Epidemiology* 3 (2006):3, accessed May 20 2017, doi: 10.1186/1742-7622-3-3

²⁰Martin Cetron, Pattie Simone, "Battling 21st-century scourges with a 14th century toolbox", *Emerging Infectious Diseases* (2004), 10(11):2053-2054, accessed May 20 2017, doi:10.3201/eid1011.040797_12.

will be increasingly expensive and ineffective in the context of modern migration and population mobility and will affect international travel and trade.

Modern migration is part of the globalization process, intimately linked to global trade and economics, safety and security, and environmental climatic changes. In many developed countries, with ageing population, it helps labor and economic demands for human capital. Therefore improving the health of migrants and reducing adverse health outcomes related to migration is nowadays growing concern globally.²¹

EUROPEAN MIGRATION CRISIS AND HEALTH

“Il avait un nom” wrote Manuel Valls, a former French Prime Minister, on Twitter, about the picture of the young Syrian boy Aylan Kurdi, whose body was picked up by a police officer on a Turkish beach, in an attempt to raise awareness on the need for action in order to protect human security of the Syrian immigrants arriving in the EU.

Health is not just about diseases. The World Health Organization (WHO) defines health as “a state of physical, mental and social well-being and not merely the absence of disease or infirmity”.²² The same applies to migrant health. Unfortunately for public health, almost two years after the crucial moment in September 2015 in which the tragic death of three-year-old Aylan Kurdi brought the world's attention on the crisis, there is a general confusion about what is at stake and what needs to be done for the many thousands of refugees from the Middle East. The right to health is well documented in numerous international and regional human rights treaties, as well as in national constitutions, as a universal right guaranteed to all. As all EU member states ratified these legal instruments, they are obliged, no matter the level of government we are referring to, to provide health care services to all without discrimination and regardless of residence status.

Starting with January, 2015 almost 2 million people, including economic migrants, have crossed the Mediterranean Sea to Europe hoping for a better life and refugees fleeing conflicts, political turmoil, ethnic discrimination, and religious persecution. The huge influx of refugees is creating an ever-increasing economic and social burden on host countries and poses important public health challenges, alongside the deeper humanitarian and social issues. The mass involuntary migration is always associated with overcrowding, poor sanitation, and restricted access to clean water, creating an optimal environment for infectious disease outbreaks.²³ But the refugee crisis really started earlier and the overwhelming commitment to host large populations fell initially on low and middle income countries like Turkey, Pakistan, Lebanon, and Iran, many of which were already facing a substantial infectious disease burden²⁴. The problem gained weight on the international political agenda only when the refugees became forced to migrate to high income countries, notably the EU ones. The collective health security aspect of the increasing numbers of refugees that can

²¹International Organization for Migration. *Migrant Health for the Benefit of All*, The Eighty-Eight Session of the IOM Council, MC/INF/275, IOM, 2004, accessed May 23 2017, https://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/88/MC_INF_275.pdf

²² World Health organization, *Constitution of WHO*, http://www.who.int/governance/eb/who_constitution_en.pdf

²³See for example Sanjeet Bagcchi. “Cholera in Iraq strains the fragile state”, *Lancet Infectious Diseases* 16 (2016): 24–25: after an official declaration of cholera outbreaks in Iraq in September, 2015, in the context of continued degradation of surveillance infrastructure in Syria, the risk of disease contagion and large-scale outbreaks occurring was very high.

²⁴Mishal S Khan, Anna Osei-Kofi, Abbas Omar, Hilary Kirkbride, Anthony Kessel, Aula Abbara, David Heymann, Alimuddin Zumla, Osman Dar, “Pathogens, prejudice, and politics: the role of the global health community in the European refugee crisis”, *The Lancet Infectious Diseases*, 16(8) (2016): e173 - e177, accessed May 27 2017, doi:10.1016/S1473-3099(16)30134-7

only be guaranteed by social integration and equity in access to health care has been shadowed by harder security issues like terrorism. And member states like United Kingdom, France or Belgium experienced several terrorist attacks during the past three years, and media abounded of reports of sexual and physical assaults in Europe, triggering exaggerated associations between refugees, terrorism, and criminality.

Many refugees come from poor countries with weak health systems, rising concern in several European countries about the occurrence of previously controlled infections within their borders. The difficult journey to safety that many refugees had to follow might increase their risk of infectious diseases, particularly measles or food and water-borne diseases, especially if they had vaccination programs that were interrupted in their countries of origin. But, to this moment, no systematic association between migration and spread of infectious diseases has been shown; the threat of outbreaks from population movements to Europe being substantially less than perceived.²⁵ On the other hand, diseases like cholera are not able of generating large outbreaks due to the living conditions and provision of health services in most EU countries like well developed public water and sanitation systems, excellent health infrastructure, and well integrated and responsive disease surveillance networks. The polio threat extensively discussed in medical²⁶ and general media, especially in light of low vaccination rates in Germany and UK, was not substantiated by facts. Following the 2013–14 outbreak of polio in Syria, some cases traceable to Syria were identified in Iraq,²⁷ but no cases were identified in Germany.²⁸ It is true that World Health Organization's Emergency Committee declared polio a Public Health Emergency of International Concern, which is the highest level of alert in public health with the exception of a pandemic, enhancing surveillance for minimizing the risk of spread.

Due to improved nutritional status and housing conditions, tuberculosis, another infectious disease of high concern, is not likely to easily spread or manifest complications in European developed countries. In addition, tuberculosis transmission from refugees to local populations will not occur often because it needs close contact. Moreover, with a prevalence of 19 cases per 100000 inhabitants, Syria is below the average prevalence in the EU (39 cases for 100000 inhabitants) and very far from certain EU member states like Latvia (57 cases per 100000 thousand0, Lithuania (83 cases per 100000), or Romania (99 cases per 100000), so refugees are more likely to be infected with tuberculosis by local populations than the other way around.²⁹

Most migrants and refugees are young and relatively healthy, but their access to quality health care, including screening for health risk factors and vaccination has been long limited by conflicts, poverty and broken health-care systems. Displacement adds several other health challenges, such as intentional and accidental injuries, psychological trauma, sexual abuse, poor nutrition, and exposure to infectious diseases. Their socioeconomic vulnerability during this process also exposes them to abuse, exploitation, and further health

²⁵World Health Organization, *Migration and health: key issues*, accessed May 27 2017, <http://www.euro.who.int/en/health-topics/health-determinants/migration-and-health/migrant-health-in-the-european-region/migration-and-health-key-issues#292117>

²⁶ See for example Martin Eichner, Stefan O Brockman, "Polio emergence in Syria and Israel endangers Europe", *The Lancet* 382(9907) (2013): 1777; David Butler "Polio risk looms over Europe; cases in Syria highlight vulnerability of nearby countries to the viral disease", *Nature* 503 (2013): 7443

²⁷ Ann Gulland "World has been slow to act on polio outbreak in Syria, charity warns", *British Medical Journal* 348 (2014): g1947, accessed May 27 2017, doi: 10.1136/bmj.g1947

²⁸Ana Schubert, Sindy Böttcher, Axel Eis-Hübinger "Two cases of vaccine-derived poliovirus infection in an oncology ward" *New England Journal of Medicine*, 374 (2016): 1296–98

²⁹ World Health Organization, *Tuberculosis surveillance and monitoring Europe 2015*, accessed May 27, 2017, http://www.euro.who.int/__data/assets/pdf_file/0004/273172/Tuberculosis-surveillance-and-monitoring-in-Europe-2015.pdf

risks. Many of the countries that migrants and refugees travel through are either unable or unwilling to provide free health, thus further endangering their situation. Final destinations, even in Europe, welcome them with precarious living conditions in transit camps that lack basic humanitarian standards. It is enough to consider Idomeni or Calais where poor sanitation, overcrowding, and insecurity are commonplace. Refugees can be exposed to various stress factors throughout the journey that may negatively impact their mental health status, including pre-migration factors such as political persecution and economic constraints, physical danger and separation during the process itself, as well as post-migration factors including detention, hostility and uncertainty in the places of arrival.³⁰

Responding effectively to the health needs of the refugees is not an easy task, given the language and, sometimes, cultural barriers, lack of health insurance coverage, a different health care system, different understandings of illness and treatment, distrust between staff and patients, and limited of access to the refugee's medical history³¹.

Meanwhile, health and social policies in recipient countries are becoming increasingly restrictive, entitlement to health-care services for refugees becoming more and more a political ping pong ball. Consequently, the burden for migrant health care has been almost entirely devolved to the non-governmental organizations community or host population, most of the health care being provided to refugees and migrants arriving in Europe by volunteers and NGOs that do not necessarily have formal training or links with the health-care system.^{32,33} But the cost of exclusion from health care will always be higher than the cost of medical services, so governments need to accept that migrants' and refugees' rights to health not only are stated in universal conventions, but are part of a pragmatic reality. There is an obvious limit to what some of the smaller and poorer European countries can do alone, but the response by many of the richer ones has been highly inadequate.³⁴ The full health effects of the greatest mass migration since World War II will only become clear in many years to come. Only history will judge how this crisis was addressed. Drawing from its collective memory of the massive displacement following World War II or from the Balkan wars of the 1990s, Europe should have been more generous in enforcing the commonly accepted "European values", among which the principle of solidarity has a frontline seat. Addressing the health aspects of the migrant crisis is important because protecting and promoting migrant health is inextricably linked to public health.

CONCLUSION

The refugee crisis that has confronted Europe has posed a major challenge to several European institutions and structures. With a few notable exceptions, the political leadership has failed lamentably. Rooted in medical practice where finding the etiology of a disease, helps treat that disease, effective public health response must tackle the "causes of the causes", the conflicts in the Middle East, to which the same European countries so reluctant

³⁰ Philip Hunter, "The refugee crisis challenges national health care systems", *EMBO Reports* 17 (2016): 492–495. doi:10.15252/embr.201642171

³¹ Dan Biswas, Maria Kristiansen, Allan Krasnik, Marie Norredam, "Access to healthcare and alternative health-seeking strategies among undocumented migrants in Denmark", *BMC Public Health* 11 (2011):560, accessed May 27 2017, doi: 10.1186/1471-2458-11-560

³² Pamela DeLargy, "Europe's humanitarian response to refugee and migrant flows: volunteerism thrives as the international system falls short", *Humanitarian Exchange* 67 (2016):5-7, accessed May 27 2017, <http://odihpn.org/wp-content/uploads/2016/09/HE-67-FINAL.pdf>

³³ Alexander E. Kentikelenis, Amanda Shriwise, "International organizations and migrant health in Europe", *Public Health Reviews* 37 (2016):19, accessed May 27, 2017, doi:10.1186/s40985-016-0033-4

³⁴ Bayard Roberts, Adrianna Murphy and Martin McKee, "Europe's collective failure to address the refugee crisis" *Public Health Reviews* 37 (2016):1, accessed May 27 2017, doi: 10.1186/s40985-016-0015-6

now to accept the resulting refugees contributed by their failures during and after the invasion of Iraq. Rather than spreading xenophobia, politicians and media should recognize the social and economic benefits refugees can bring. Young immigrants, which are a major part of the arriving population, represent a minimal pressure on welfare services, but could foster economic growth and pay more in taxes than they claim in government benefits. Finally, to prevent is always better than to cure. Therefore providing appropriate health services could, in the end, save a lot of costs. It is time to shift from panicking to planning.

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IS THE EUROPEAN AGENDA FOR MIGRATION A THREAT TO THE SECURITY OF THE EU'S EXTERNAL BORDERS ?

Andreea-Loredana TUDOR¹

ABSTRACT:

THE PROTECTION BY MEMBER STATES OF PEOPLE WHO, FOR VARIOUS REASONS, SEEK LEGAL MEANS TO MIGRATE TO THE TERRITORY OF ANOTHER STATE, WAS THE FOUNDATION OF THE EU'S PRIMARY OBJECTIVE OF SECURING AND GUARANTEEING ONE OF THE FUNDAMENTAL FREEDOMS, NAMELY THE FREE MOVEMENT OF PERSONS. THE EUROPEAN MIGRATION AGENDA OF 2015 COMBINES INTERNAL AND EXTERNAL POLICIES SO THAT EU INSTITUTIONS, SOCIETY, LOCAL AUTHORITIES AND GLOBAL ORGANIZATIONS PROVIDING ASSISTANCE TO MIGRANTS IN ORDER NOT TO FACE OBSTACLES, AND THEIR INTEGRATION TO BE, INTO NEW COMMUNITIES, MUCH EASIER. BUT WITH THIS FREEDOM, EU COUNTRIES ALSO FACED PHENOMENA THEY DID NOT EXPECT, SUCH AS THE EXPLOITATION OF MIGRANTS BY CRIMINAL NETWORKS, TRAFFICKING IN WEAPONS OR BANNED SUBSTANCES, AND TERRORISM. THE SECURITY OF THE EU'S EXTERNAL BORDERS BEING THUS THREATENED HAS PROMPTED OPERATIONAL COOPERATION AS EFFICIENTLY AS POSSIBLE FOR AGENCIES SUCH AS EUROPOL, FRONTEX AND EUROJUST. THIS ARTICLE, WITHOUT PROPOSING TO TREAT THE PROPOSED SUBJECT IN ITS ENTIRETY, SEEKS TO IDENTIFY THE MOST RELEVANT AND CURRENT ISSUES IN THE FIELD OF MIGRATION AS A POLICY OF EU IN RELATION TO THE INTERNATIONAL OBLIGATIONS ASSUMED BY THE EU BY SIGNING INTERNATIONAL AGREEMENTS WITHOUT, HOWEVER, ENDANGERING THE SECURITY OF CITIZENS AND MEMBER STATES.

KEY WORDS: SECURITY, IMMIGRATION FLOWS, THE EUROPEAN AGENDA ON MIGRATION, COOPERATION, Terrorism.

1. INTRODUCTION

Starting from the main goal of the European Union to create an area of freedom, security and justice within which citizens enjoy the freedoms and fundamental rights guaranteed by the Treaty, we can note the many efforts and changes brought by the Union treaties. It was necessary to respect the principle of the freedom of movement of persons and to create a Community policy on migration, asylum and border controls. Thanks to the Amsterdam Treaty, the rules in this area have been communitarised. The European Union protects the fundamental rights of people, the desideratum of its evolution, so that European citizens are allowed to move from one Member State to another without control at internal borders, but also access to the territory of European citizens of third-country nationals. This guarantees and protects citizens' right to study, work or family reunification. At the same

¹ Ph.D Student, National School of Political and Administrative Studies, Bucharest, andreeal_tudor@yahoo.com

time, citizens' right to a safe space is also taken into account, which is why the Treaty of Lisbon (TFEU) comes to ensure their protection through an effective control system at the external borders, bringing together in a chapter of public policies specific to the current situation. As regards border control, the EU's own policy provides for the absence of internal border controls in the content of Article 77 TFEU, as well as the careful control and surveillance of persons crossing the external borders. It is clear that in the current security context of citizens, priority in the EU is rather to fight against the terrorist threat and to integrate migratory flows. The migration agenda thus becomes the main European public policy analyzed in a broader context of the review of the whole package of normative acts on the right of European citizens to a safe space in a climate favourable to development. This article will explore how current is the Agenda, in the international context, possible measures.

The main bibliographic resources used in drafting are the studies and reports of the European Institutions or the Romanian European Institute, as well as the European Commission's statistical data. Period chronological study is targeted for 2007-2017 period, during which there were important decisions to the Governments of the Member States, but also in terms of regional policies and transnational cooperation. They were identified and analyzed a number of relevant monographs, scholarly articles under the flow of international databases, comments from European officials.

2. POLICIES AND JOINT ACTIONS TO PREVENT AND COMBAT CRIMES AFFECTING EU SECURITY

Analyzed from another perspective, guaranteeing freedom of movement with the direct consequence of giving up internal borders, amid the operational inefficiency of some of the authorities at the external borders, has caused negative consequences for Union citizens. Thus, a series of serious crimes affecting EU security such as terrorism and the violation of fundamental rights of migrants through exploitation by criminal networks have led Member States and the EU to adopt a series of common policies and actions to prevent and combating these phenomena.

Another contextual phenomenon that has led the European Union to adopt measures in relation to everyday reality, namely the weakening of immigrant reception requirements in order to cover the labour shortage, was represented by the migration wave in 2015 determined by the outbreak of civil wars in Libya and Syria.

Unfortunately, a flow of more than 1 million immigrants and refugees has entered the European Union territory in 2015, a phenomenon unprecedented since the Second World War. Given that no Member State can take measures by itself to protect and provide unitarily the rights claimed by persons entering its territory but also to protect its own citizens either from the point of view of the work or possible threats to their security, it was necessary for all Member States, together with the European Union, to use all internal and external policy tools to identify a common policy in this area that would guarantee safe borders, unitary procedures and protection of the rights and freedoms of all citizens.

Therefore, in order to be able to manage this fact, the European Union created the European Migration Agenda in the same year as a mechanism for controlling the migration flow, a mechanism that involves a close link between the Member States, their authorities, the Union institutions and the EU agencies.

The solution identified by the European Union on the flow of immigrants is built, in principle, on four pillars. The first is to reduce the factors that encourage irregular migration. What is particularly worrying is the ratio of those who migrated to the European space

because almost 75% of the more than one million immigrants tried to cross the Mediterranean, thousands of people even losing their lives².

Much of them paid the networks of human traffickers to be driven to the European space, even indicating the connivance of corrupt officials, which means that a number of illegal border crossings have been used. The European Union considers appropriate solutions to prevent these procedures by tightening up investigations and prosecution of trafficking offenders, fighting for the elimination of their networks, strengthening the FRONTEX³ procedure for the return of illegal migrants and developing and strengthening relations with the states third countries, ie those of transit and origin in the area of illegal immigration by the posting of European liaison officers.

The second pillar foresees saving lives and securing external borders⁴. In order to save lives, the EU initially allocated more than € 10 billion from its own budget to cope with the refugee crisis in order to meet their basic needs. At the same time, the EU also provides humanitarian aid to third countries, such as Turkey, a country that hosts a large proportion of refugees arriving on its territory but ending up with EU Member States⁵. FRONTEX also has a very important role in this case. Against the backdrop of all the agreements that the EU has and in the international space, such as the United Nations, both the Union and the Member States have made a contribution to helping those in need of protection because the political, military or economic situation no longer allows them to return to their country of origin. In this respect, partnerships with third countries, which are in the neighborhood of the EU, are vital to the Union's external border security.

The third pillar concerns a solid asylum policy. The Common European Asylum System already introduced but reinforced by the Treaty of Lisbon, will be fully implemented only together with a new monitoring mechanism based on systematic fingerprinting of refugees. Increased attention is also paid to the application of equal and unitary treatment to all asylum seekers, thus attempting to eliminate the unfair use of the asylum system.

The last pillar of the Agenda calls for a new policy on legal migration based on a system that allows for a firm-based selection based on an asylum application. Thus, equal treatment for all applicants is guaranteed, but they can also be tracked in EUROPOL's checking systems to no longer pose a security risk. In this respect too, the EU is proposing to modify the European Blue Card, which allows highly qualified immigrants to work and live in the EU, thereby increasing their benefits.

All these initiatives under the European Agenda for Migration can only be successful through careful and close cooperation on the one hand between the competent authorities of the Member States and on the other hand between the institutions and agencies of the European Union. The joint refugee assistance procedure, immigration transfer and

² See for details European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a global approach to migration by the EU (2015/2095 (INI))

³ FRONTEX - The European Border Police and Coast Guard Agency - helps EU Member States and Schengen associated countries to manage their external borders. It also contributes to the harmonization of border controls across the Union. The Agency facilitates cooperation between the border authorities of each EU country, providing technical assistance and expertise

⁴ On 7 March 2017, the Council adopted a regulation amending the Schengen Borders Code to reinforce checks by consulting relevant databases at the external borders. The change obliges Member States to carry out systematic checks by consulting relevant databases on all persons crossing the external borders. The checks will also allow Member States to determine whether or not these persons pose a threat to public policy, internal security or public health. This obligation applies to all external borders (air, sea and land), both at entry and exit. For details see <http://data.consilium.europa.eu/doc/document/PE-55-2016-INIT/en/pdf> - accessed 27.04.2017

⁵ See Joint Communication to the European Parliament and the Council - Identification of solutions to the European Refugee Crisis: the role of EU external action - JOIN (2015) 40 final - 9.9.2015 - accessed 27.04.2017 <http://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX%3A52015JC0040>

resettlement proposals, detection and tracing of trafficked persons, preventing and combating terrorism are all possible by strengthening the role of FRONTEX, the centralization of all information through EUROPOL, the secondment of liaison officers, the preparation of the legal body by EUROJUST, which deals with the investigation and prosecution of those committing serious crimes such as terrorism and trafficking in human beings.

3. FAILURE TO IDENTIFY THE MOST APPROPRIATE CONTROL DECISIONS

Returning to the initial thesis, one of the main objectives of the Agenda was to guarantee an area of freedom, security and justice. As we know, the EU is constantly confronted by a large flow of immigrants, and the recent terrorist attacks in the European space prove that some of them represent a real threat to EU security. Unfortunately, terrorism is not the only serious threat to the European community at this time. Organized crime and computer crime join. The latest offense has grown in recent years, favoring the spread of violence and the attack on European values and institutions.

Thus, a series of serious crimes affecting EU security such as terrorism and the violation of fundamental rights of migrants through exploitation by criminal networks have led Member States and the EU to adopt a series of common policies and actions to prevent and combating these phenomena. It results that one of the negative consequences of the introduction of the European Migration Agenda may be the result of one of the most important axes, namely the lack of control at the EU's internal borders. Due to the spread of illegal immigrants across the EU without being able to control effectively all people entering the European area, Member States have had to force the reintroduction of controls at internal borders, thus even depriving their own citizens of this important freedom. A natural question must nevertheless be put forward can the Agenda be a failure, even from the perspective of the previously hardened?

4. CONCLUSIONS

Although for that time it seemed a well-developed instrument to help the EU overcome the migration crisis, creating mechanisms to ensure both the security of EU citizens and its borders on the one hand, but also the help given to migrants and refugees through joint actions and at the international level, on the other hand, the European Agenda for Migration seems today to be overcome. Decreasing the requirements of entry into the EU space for migrants to cover the labor shortage has led to a difficult management today for citizens entering the territory of the Member States, with the EU even facing a large immigration flow in 2017 to destabilize the situation of some Member States more than others. At the same time, terrorist offenses, illegal trafficking in human beings, serious crimes that threaten EU security and international security have been spread and favored, unintentionally, and in this direction the fight against these phenomena has to be intensified and specialized institutions come back, first of all, this important task.

The EU must have a balanced but firm approach to immigration and provide facilities for joint efforts by Member States to promote the integration of third-country nationals legally residing in the EU, especially for the difficult exercise of attracting people innovative in the European space⁶. One of the first inconveniences could be the lack of uniform provisions on the harmonization of national laws and regulations with respect to European

⁶ See in detail Directive 2009/50 / EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment introduced the "Blue Card", a fast-track procedure for issuing a special residence permit and by providing more attractive conditions for third-country workers to enable them to access highly qualified employment in the Member States.

directives. In this broad context, tackling clandestine immigration is the EU's responsibility⁷, and a first step in this direction would surely be the revision of the Blue Card Directive⁸, in particular with regard to the development of public return policies by concluding or revising readmission agreements in the country of origin or provenance of third-country nationals who do not, or who no longer, fulfill the conditions of entry, presence or residence in the territory one of the Member States⁹, but also with respect for fair treatment, at least in terms of respect for fundamental rights¹⁰.

Last but not least, the principle of solidarity needs to be reconsidered, strictly in line with the provisions of the Treaty of Lisbon, which includes, amongst others, the equitable distribution of responsibility, including its financial implications, between Member States in Article 80.

⁷ Liza Mügge, Marleen van der Haar, *Who Is an Immigrant and Who Requires Integration? Categorizing in European, Integration Processes and Policies in Europe Contexts, Levels and Actors* Blanca Garcés-Mascareñas, Rinus Penninx Editors, Sage Open, 2016, ISBN 978-3-319-21673-7, p.77

⁸ Sona Kalantaryan and Iván Martín, Migration Policy Centre, EUI, *Reforming the EU Blue Card as a Labour Migration Policy Tool?* Migration Policy Centre Robert Schuman Centre for Advanced Studies - European University Institute, ISBN 978-92-9084-317-7 ISSN 2363-3441, 2.

⁹ Sergio Carrera, *Implementation of EU Readmission Agreements - Identity Determination Dilemmas and the Blurring of Rights*, Springer Open, 2016, ISBN 978-3-319-42504-7, 25

¹⁰ See, for details, http://www.europarl.europa.eu/ftu/pdf/en/FTU_5.12.3.pdf - accessed 27.04.2017

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CLAUSES DEEMED UNWRITTEN. INTERNATIONAL LANDMARKS

Andra-Ioana ALEXE¹

ABSTRACT:

ALTHOUGH THE NEW ROMANIAN CIVIL CODE PROVIDES THE CLAUSES CONSIDERED UNWRITTEN IN MOST OF THE MATTERS CONTAINED THEREIN, IT DOES NOT DEFINE THEM IN ITS CONTENT. THIS STUDY AIMS TO PRESENT, IN A COMPARATIVE MANNER, THE CLAUSES CONSIDERED UNWRITTEN AS PROVIDED BY THE LAWS OF CERTAIN STATES, ESPECIALLY THOSE THAT HAVE INFLUENCED THE DRAFTING OF THE ROMANIAN CIVIL CODE. ALTHOUGH THE CLAUSES CONSIDERED UNWRITTEN HAVE A LONG HISTORY, TODAY STILL EXIST DOCTRINAL DEBATES ON THE NATURE OF THEIR LEGAL REGIME AND THREE SOLUTIONS ARE PROPOSED: THE THEORY OF NON-EXISTENT ACTS, SANCTION OF NULLITY OR AUTONOMOUS SANCTION.

KEY WORDS: CLAUSES DEEMED UNWRITTEN; NULLITY; NON-EXISTENT ACTS; IMPOSSIBLE CONDITION, CONTRARY TO LAW OR GOOD MORALS; ROMANIAN CIVIL CODE

INTRODUCTION

On October 1st, 2011, the New Romanian Civil Code² came into force in which the legal concept of the clauses deemed unwritten is foreseen. The lack of a legal definition has given rise to a strong doctrinal debate on the nature of their legal regime, the clauses deemed unwritten being related to the theory of non-existent acts³, or to the partial nullity sanction⁴ or

¹ PhD. Student, Faculty of Law, University of Craiova, e-mail: andra_lexe@yahoo.com

² Law no. 287/2009 privind Codul civil, republished in "Monitorul Oficial al României", part I, no. 505 of July 15, 2011, as amended and supplemented.

³ Regarding the theory of non-existent acts, see: Dimitrie Alexandresco, *Principiile dreptului civil*, (București: Atelierele grafice SOCEC & Co., Societate anonimă, 1926), 74-75, 80-84; Doru Cosma, *Teoria generației a actului juridic civil*, (București: Editura Științifică, 1969), 300-302; Liviu Pop, *Tratat de drept civil. Obligațiile, vol. II, Contractul*, (București: Universul Juridic, 2009), 438-439.

⁴ Regarding the nullity, see: Ion Dogaru, Sevastian Cercel, *Drept civil Partea generală*, (București, C.H. Beck, 2007), 147; Gabriel Boroș, *Drept civil Partea generală Persoanele ediția a III-a, revizuită și adăugită*, (București: Hamangiu, 2008), 172-203; Gabriel Boroș, Carla Alexandra Angheliescu, *Curs de drept civil. Partea generală*, ediția a2-a, (București: Hamangiu, 2012), 249; Cristina Zamșa, „Comment (at art. 1204-1288)”, in *Noul Cod civil. Comentariu pe articole. Art. 1-2664*, Flavius Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (coord.) (București: C.H.Beck, 2012): 1315; Marian Nicolae, „Nulitatea parțială și clauzele considerate nescrise în lumina Noului Cod civil. Aspecte de drept material și drept tranzitoriu”, *Dreptul* 11 (2012): 11-39.

considered as an autonomous sanction⁵. „Regardless of the perspective from which it is analyzed, the consideration of the clause as unwritten is obviously a limit to the autonomy of will of the subjects of law in their capacity as contracting parties. This is mainly due to the fact that the unwritten clause effect is lawful, so the consideration of the clause as unwritten is lawful, which makes the will of the contracting parties unimportant”⁶. The drafting of this article is based on the premise that, in order to be able to correctly establish the nature of the legal regime of the terms considered unwritten, we must also investigate the legal systems of other states, especially those that have exerted a great influence on the current Romanian Civil Code and ” according to a well-known practice of the Romanian legislator, this institution was borrowed from the laws of other states, possibly from French or Quebec legislation, and has been transposed into national law without a regulation that is sufficiently consistent to make it possible to understand and its application in practice”⁷. I have chosen to outline how the clauses deemed unwritten are governed by the Quebec Civil Code and the French Civil Code updated due to the fact that these two codes exerted a strong influence on the Romanian Civil Code. I also analyzed the regulation of the systems of other European states, but also of the American system.

The **QUEBEC CIVIL CODE** came into force in 1994, approximately 50 years after the beginning of its drafting. Until then, the Civil Code of Bas-Canada was applied in Quebec, the first codification of the province, made in 1866 and based on the French Civil Code.

The Romanian Civil Code follows the same structure of systematization of the fundamental institutions of civil law as the Civil Code of Quebec: natural⁸ and legal person, family, successions, property, obligations⁹, including special contracts, privileges and mortgages, extinctive prescription, publicity of rights and, also, rules of private international law. Among the notions and institutions retained by the Romanian Civil Code, I mention: the principle of the superior interest of the child and the notion of parental authority, rules on succession, the adhesion contract, the institution of administering the assets of another.

Regarding the clauses deemed unwritten, the Civil Code of Quebec provides them in the following articles: 757, 758, 778, 1101, 1216 and 1438. An analysis of these articles reveals their applicability in several matters: legal documents affected by an impossible or immoral condition, succession, commercial or property. Thus, the condition that is impossible or contrary to good morals that affects a legal act between living or dead causes is considered unwritten. Also, the condition limiting the surviving spouse's rights in the event of a new marriage or civil partnership is considered unwritten. The criminal clause aimed at removing the right of an heir or a private legatee to challenge the will or part of it or the criminal clause in which there is a disinheritance for the same purpose is considered unwritten. The clause which has the effect of restricting the rights and obligations of the executor in such a manner that he can not perform the act of inheritance or the inventory is

⁵ See: Carmen Tamara Ungureanu, ”Clauzele contractuale considerate de Noul Cod civil ca nescrise reprezintă o sancțiune autonomă?”, *Dreptul* 10 (2013): 48-61; Stela Stoicescu, ”Clauzele nescrise în sistemul Codului civil”, *Revista română de drept privat* 2 (2015): 193-217.

⁶ Anca Costina Gheorghe, ”Considerații asupra clauzei reputate nescrise”, *Revista de Științe Juridice* 2 (2014): 118.

⁷ Anca Costina Gheorghe, ”Considerații asupra clauzei reputate nescrise”..., 116.

⁸ Regarding the ability of the natural person, see: Sevastian Cercel, Ștefan Scurtu, ”Full Legal Capacity Acquired before the Age of Majority”, *Revista de Științe Politice* 46 (2015): 297-304.

⁹ Regarding the submission of obligations, see: Sevastian Cercel, Ștefan Scurtu, ”Cesiunea de creanță în Noul Cod Civil”, *Revista de Științe Juridice* 1 (2014): 64-79.

considered unwritten. In commercial matters, the Code provides that any stipulation in the constitutive act amending the number of votes required by the law to make any decision is considered unwritten. Any clause that tends to remove the right of a person whose property is inalienable to challenge the validity of the ineligibility clause or to apply for a transfer of ownership permission is considered unwritten. Also, any criminal clause that has the same effect is also unwritten.

It is interesting to know the provisions of art. 1438 of the Civil Code of Quebec according to which the void clause does not lead to the abolition of the entire act unless it was crucial to its conclusion. The same happens with clauses that have no effect or are considered unwritten. *"This last article reveals the terminological difficulties which in the articulation of sanctions, that the clauses are " sans effet" (without effect), "nulles" (null) or "réputée non écrites" (struck out). However, the Quebec doctrine does not seem to see in these terminological variations hesitation about their basis, moreover it considers the difference terms used as synonyms"*¹⁰.

THE FRENCH CIVIL CODE UP TO DATE

Upon entry into force in 1804, the French Civil Code provided the sanction of clauses deemed unwritten only in the field of donations and the testamentary, in art. 900. From that point on until today, the code has been modified, updated to regulate social relations in a more folded way. Currently, the French Civil Code provides the sanction of clauses deemed unwritten in the following matters: successions, contracts, companies, property and guarantees.

In the field of property, the Code provides in art. 1831-5 that any stipulation contrary to the fact that the judicial transaction or the liquidation of the assets does not automatically lead to termination of the contract is considered unwritten. Also, art. 1873-6, which is part of Title IX bis, Chapter I "Agreements on the exercise of individual rights in the absence of the usufructuary", states that all the clauses which extend the powers of the administrator to what the article provides are considered unwritten.

In commercial matters, art. 1844-1 states that a clause granting one shareholder the entire profit of the company or he is exempt from participating in losses is considered unwritten. Also, art. 1844-10 provides that any clause that violates a legal provision governed by Title IX and is not punished with nullity shall be deemed unwritten. Article 1843-5 provides that any clause in the articles of association of a company which has the effect of subordinating the exercise of company rights to a prior notice or prior authorization of the general meeting or the waiver of the exercise of such rights shall be deemed not to be written.

In the matter of the lease, art. 1792-5 states that any clause excluding or limiting the liability, guarantees or solidarity provided by certain previous articles is considered unwritten.

In 2006, the French Civil Code was amended by Ordinance no. 346 of 23.03.2006 which provided for the sanction of the clauses deemed unwritten in the matter of personal and real guarantees. Also, art. 2372-3, art. 2488-3, art. 2372-5, art. 2488-5 and art. 2422 provide for this civil sanction.

In the context of legislative inflation, Ordinance no. 131 of February 10, 2016 reformed the subject matter of contracts and obligations. One of the objectives of this reform was the introduction of the case law in the Code. This reform regulated the direct negotiation of the contract, the conclusion of the contract, the non-execution of the contract and the sanctions,

¹⁰ Bénédicte Fauvarque-Cosson and Denis Mazeaud, *European Contract Law Materials for a Common Frame of Reference: Terminology, Guiding Principles, Model Rules*, (Munich: Sellier European Law Publishers, 2008): 385.

as well as the exceptions. Regarding the sanction of clauses considered unwritten, art. 1170 provides that all clauses that deprive of its substance the essential obligation are considered unwritten and then art. 1171 states that in an adhesion contract any clause that generates a significant imbalance between the rights and obligations of the contracting parties is reputed as unwritten. Article 1184 par. 2 specifies that if a clause is considered unwritten, the contract is maintained. The criminal clause is governed by art. 1231-5, which ultimately states that any contrary stipulation is considered unwritten. According to art. 1245-14, the clause that removes or reduces the warranty obligation for defective products, unless the parties are professional, is deemed unwritten. In the matter of payment, art. 1343-5 regulates the conditions under which payment may be postponed or suspended by court for a specified period, stating that any contrary provision is considered unwritten.

In addition to the French Civil Code, the sanction of clauses deemed unwritten is also provided in other normative acts, such as: Insurance code¹¹, Commercial Code¹², Consumer Code¹³, Labor code¹⁴, Environmental Code¹⁵, Public Health Code¹⁶ sau Social Security Code¹⁷.

The **GERMAN CIVIL CODE**, applicable since January 1st, 1900 continues to produce legal effects today. Article 138 par. 1 provides that the legal act contrary to public order is null. The German Civil Code like the Cuza Civil Code assigns the same legal regime both to conventions and to testaments affected by a condition contrary to good morals, namely their nullity. Article 2171 par. 1 of the Code provides that a will affected by a condition impossible or contrary to law is ineffective, therefore produces no effect.

It is also interesting to know the provisions of the German Civil Code in respect of abusive clauses as they have been regulated since 1977 and which recognizes two terminologies of their legal consequences.

The Code defines standard business clauses as contract terms that are drawn up for more than two contracts and that a party to the contract (the user) imposes on the other party without being directly negotiated with the latter when the contract is concluded. It is further specified that such clauses form parts of the contract are valid only if they are presented and accepted by the other contracting party. Article 305c par. 1 of the Code provides that these standard business clauses, if they are unusual and the part of the contract that did not propose them could not expect to meet them in the contract, do not also form part of the contract. Therefore, a first category of consequences of abusive clauses is not to be considered as part of the content of the contract.

The second category results from the insertion in the contract of a clause contrary to good faith and which creates a major imbalance for the party that did not propose it or by inserting a forbidden clause with or without the possibility of evaluation as defined by art. 308 and 309 of the Code. All these clauses are declared ineffective.

It can be noticed that, irrespective of the terminology used, the result is virtually the same, namely that the clause will not produce any legal effect and the legal document will be maintained. It has been argued that the different terminology has been retained because in the case of the first category, the clause is not part of the contract unless all the circumstances

¹¹ See art. L121-16, L126-2, L127-2-2, L211-6, L351-7, R322-53 II, R322-55-4 II.

¹² See art. L 132-8, L 134-16, L 141-2, L 142-45, L 221-7 al. 3, L 221-12, L 221-13, L 221-16, L 222-9, L 223-14 and others.

¹³ See art. L524-1, L623-32, L312-38, L343-3, L331-3, L 621-2, L621-8, L241-5, L241-1.

¹⁴ See art. L2231-9, L2232-27, L2232-22.

¹⁵ See art. L412-13, 541-33.

¹⁶ See art. 1113-9.

¹⁷ See art. R922-26, R931-3-15, R931-3-19, R931-3-21, R931-1-23, R931-3-39, R931-3-44.

that led to the conclusion of the document are taken into account, the clause may be valid in another contract, whereas the ineffective clauses can not be validly part of any contract. Moreover, ineffective clauses can be challenged in court collectively by consumer associations or other organizations, unlike the other clauses that can only be the subject of an individual action¹⁸.

The **SWISS CIVIL CODE** entered into force on January 1, 1912, provides for the legal regime of wills affected by conditions or encumbrances in art. 482. This article distinguishes between the legal status of unlawful or contrary to good morals conditions or encumbrances and onerous conditions or encumbrances for others or meaningless. As regards the first category, the Swiss Civil Code declares the wills affected by such conditions or encumbrances void. Concerning the second category, it is provided the solution of considering the condition or encumbrance as unwritten.

The Swiss Federal Code of Obligations of 1911, unlike the Swiss Civil Code, which refers to the clauses deemed unwritten only in art. 482, provides them repeatedly. For example, in relation to the regulation of the bill of lading (art. 995, art. 999, art. 1002, art. 1006) and the check (art. 1104, art. 1106, art. 1109, art. 1110, art. 1115). It is important to note that art. 1123 and art. 1125 use the expression "clause réputée non avenue" ("deemed not done") - that may create confusion. The articles provide that the deletion of the designated bank name from a barred check, i.e. the deletion of the statement "only on the account of the beneficiary", shall be considered as not made. It is noted that the provisions refer to a material removal operation that leaves no effect, the check still being valid as it existed prior to deletion. Therefore, this operation does not have legal consequences.

The **AUSTRIAN CIVIL CODE**, applicable since 1811, provides in art. 696 the definition of the condition, namely that "*It is called a condition, an event to which a right is attached*"¹⁹. Further, art. 698 states that only the suspensive condition that is impossible or contrary to the law cancels the donation or the will, while the impossible or illicit resolving condition is considered unwritten regardless of whether it affects a donation or a will.

Like the Calimach Code applicable on the territory of Moldova²⁰ and Caragea Code applicable in Romanian Country²¹, the Austrian Civil Code provides the nullity of the donation affected by an impossible or unlawful suspensive condition, but unlike them, the impossible or contrary to the law resolving condition inserted into a donation is considered unwritten. The same regime is governed by the Austrian Civil Code for the will affected by an impossible or unlawful condition, making a distinction between the suspensive and resolving condition. Both, the Calimach Code and the Caragea Code, regardless of the impossible or immoral condition, considered it unwritten if included into a will. Also, the Romanian legislator provided in the Romanian Civil Code of 1865 for donations and wills affected by condition that is contrary to law and good morals, the same legal regime, namely nullity, unlike the Austrian legislature which regulated differentiated as we have shown above.

¹⁸ See Bénédicte Fauvarque-Cosson and Denis Mazeaud, *European Contract Law Materials...*, 387.

¹⁹ Dimitrie Alexandresco, *Explicațiunea teoretică și practică a dreptului civil român, Tomul IV, Partea I*, (București: Atelierele grafice SOCEC & CO. societate anonimă, 1913), footnote no. 4: 173.

²⁰ It entered into force on October 1, 1817 and was abrogated by the Romanian Civil Code published in "Monitorul Oficial" no. 271 of December 4, 1864.

²¹ It entered into force in 1819 and was abrogated by the Romanian Civil Code published in "Monitorul Oficial" no. 271 of December 4, 1864.

The **ITALIAN CIVIL CODE OF 1865** was applicable until 1942 when it was replaced by the current Civil Code of Italy. It provided in art. 849 that if the condition contained in a will is impossible, contrary to law or good morals, it will be deemed unwritten. Also, art. 1065 established that such a condition cancels the donation. It is noted that the Italian legislator opted for the solution provided by the French Civil Code. Similarly, the Calimach Code and Caragea Law distinguished between the impossible, illicit or immoral condition provided in a donation or testament, and were on the same line of settlement. Although the Italian Civil Code of 1865 was a source of inspiration for the Romanian Civil Code of 1865, the Romanian legislature preferred to abolish both donations and wills affected by an impossible condition, contrary to law or good morals.

Currently, Italian law no longer recognizes the sanction of clauses deemed unwritten²².

The **BELGIAN CIVIL CODE** provides in art. 900 that in the legal documents between the living and within the testaments, the impossible conditions, contrary to law or good morals are considered unwritten. Although it was heavily influenced by the Napoleon Code, it did not keep the legal difference between donations and wills affected by an impossible, illicit or immoral condition. Similarly, in the matter of obligations, are provided clauses deemed unwritten (articles 1153 and 1231).

The **ENGLISH LEGAL SYSTEM**, being a common-law system, its main feature is that it is not coded. This means that there is a written legislative encompassing legal rules only as an exception.

*"The Anglo-Saxon law system has a number of characteristics (compared to Roman-German law): it has a separate structure (common-law, equity and legislative law); the system of springs, the conceptualization procedures and the legal language are different; the division of law into public law and private law is not recognized; the creation of the right is not necessarily the fruit of specialized activity governed by principles of legislative technique; there are, generally, no codes based on the continental model"*²³.

"The Unfair Contract Terms Act" adopted in 1977 and entered into force on February 1, 1978, states that those clauses which are abusive or do not pass the „reasonableness test" as regulated by law do not produce any effect. On the other hand, the sanction of nullity is provided separately for clauses that meet other criteria. Since 1994, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts has been transposed. The first transposition legislation was "The Unfair Terms in Consumer Contracts Regulations" drafted in 1994 and entered into force on July 1st, 1995. It was replaced in 1999 by "Consumer Protection: the Unfair terms in Consumer Contracts Regulations" which entered into force on October 1st. Since 2015, "The Consumer Rights Act" applies and replace the 1999 act. In principle, all three legislative acts provided that an abusive clause in contracts concluded with consumers is not binding on them, so it does not produce legal effects in respect of them and the legal document will remain in place regarding the other clauses²⁴.

The **AMERICAN LAW SYSTEM**, like the English one, is also a common-law system that applies in the United States of America (with the exception of the state of Louisiana which adopted the legal system according to the French model).

²² See Bénédicte Fauvarque-Cosson and Denis Mazeaud, *European Contract Law Materials...*, 380.

²³ Nicolae Popa, *Teoria generală a dreptului*, (București: C.H.Beck, 2008): 59.

²⁴ See: *The Unfair Terms in Consumer Contracts Regulations 1994*, art. 5; *Consumer Protection : the Unfair terms in Consumer Contracts Regulations 1999*, art. 8, *The Consumer Rights Act 2015*, art. 62 and art. 67.

"The Second Restatement of the Law of Contracts" is a treaty of law that provides for the general principles of contracts in the common-law system. According to it, a part of an agreement which *"has reason to believe that the other party manifesting such assent would not do so if he knew that the writing contained a particular term, the term is not part of the agreement"*²⁵. Thus, it is regulated that certain clauses may be considered as not being part of the contract.

CONCLUSION

This brief overview leads us to the conclusion that the provision of the clauses deemed unwritten in the national laws of different states extends not only to European continent, but also to the American one. Romania is not the only state in which a unanimous solution has not been reached with regard to the nature of their legal regime, but knowing the regulations of other states and the foreign doctrinal opinions is a cornerstone for the formation of a reasoned opinion. If in Quebec, the terms considered unwritten are largely assimilated to nullity, France tends towards the solution of an autonomous sanction. So far, the Romanian doctrine has reached a consensus, that regardless of the nature of their legal regime, the clauses deemed unwritten do not produce any legal effect.

²⁵ See Bénédicte Fauvarque-Cosson și Denis Mazeaud, *European Contract Law Materials...*, 386

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THE EUROPEAN UNION EXTERNAL ACTION ON MIGRATION AND ASYLUM: THE 2016 “MIGRATION PARTNERSHIP FRAMEWORK” AND ITS OUTCOMES

Francesca GRAZIANI¹

ABSTRACT:

THIS PAPER FOCUSES ON THE EUROPEAN UNION (EU) EXTERNALISATION OF MIGRATION AND ASYLUM POLICY. IN JUNE 2016, THE EUROPEAN COUNCIL ENDORSED THE “MIGRATION FRAMEWORK PARTNERSHIP” (MPF), WHOSE PURPOSE IS TO ESTABLISH WIN-WIN PARTNERSHIPS WITH THIRD COUNTRIES OF ORIGIN AND TRANSIT OF MIGRANTS, PARTICULARLY IN AFRICA, TO BETTER MANAGE MIGRATION. DESPITE SOME POSITIVE STEPS FORWARD, THE MPF DOES NOT REPRESENT A REAL CHANGE OF DIRECTION, BUT RATHER THE LAST EVIDENCE OF AN APPROACH THAT HAS BEEN GOING ON SINCE THE END OF THE 1990’S. AS IN THE PAST, THE EU ACTION IS MAINLY CENTERED ON MEASURES AIMED TO CURB IRREGULAR MIGRATIONS, WHILE A COMPREHENSIVE AND COHERENT STRATEGIC PERSPECTIVE IS STILL LACKING. THIS PAPER ARGUES THAT, ONE YEAR AFTER THE ADOPTION OF THE MPF, THE EU STRATEGY IS QUESTIONABLE. SO FAR, DATA SHOW THAT EU POLICY HAS NOT PREVENTED MIGRANTS AND REFUGEES FROM ARRIVING TO EUROPE, NOR HAS IT INCREASED RETURNS OF IRREGULAR MIGRANTS. THE EU NEEDS TO REBALANCE MORE FAIRLY ITS RESPONSE TO MIGRATION, BY OPENING LEGAL MIGRATION CHANNELS AND INTRODUCING MONITORING MECHANISMS BOTH TO ASSESS THE IMPACT OF ITS ACTION AND TO ENSURE FULL COMPLIANCE WITH HUMAN RIGHTS INTERNATIONAL OBLIGATIONS.

KEYWORDS: EUROPEAN UNION – MIGRATION – ASYLUM – MIGRATION PARTNERSHIP FRAMEWORK

INTRODUCTION

In the last two years, the externalisation of migration and asylum policy has emerged as a key priority on the EU agenda. The rationale is to support third countries of origin and transit of migrants to stem migratory flows to Europe, and to remove the root causes of migration by advancing development projects. Albeit cooperation with third countries has become a EU mantra to address mixed migration (i.e. economic migrants and individuals in need of international protection), the question remains how cooperation applies in practice.

This paper aims to scrutinize the overall EU strategy. After a brief analysis of the origin and content of the EU approach, focusing on the 2016 *Migration Partnership Framework* (MPF), this article assesses the outcomes of the MPF, one year after its adoption,

¹ Associate Professor of International Law, University of Campania “Luigi Vanvitelli”, francesca.graziani@unicampania.it

by ascertaining its effectiveness in deterring irregular migrations, as well as its compatibility with international human rights obligations.

MPF: THERE IS NOTHING NEW UNDER THE SUN

Presented as an innovative approach for a more systematic cooperation with non-EU countries in the domain of migration and asylum, the MPF is not really a novelty.

Back in 1999, the Tampere European Council officially embraced the so-called *comprehensive approach* to migration, namely a wider, holistic and proactive approach, which balances EU internal and external policies and combines *control measures* to tackle irregular migrants, ideally before they even reach the EU borders, with *preventive measures*, in order to confront the fundamental causes of migratory movements.² Thereafter, according to this perspective, the EU strategy has been translated into action. Particular reference is made to the *Global Approach to Migration*, first adopted in 2005,³ and the EU-AU Migration Dialogue, mainly the *Rabat Process*, launched in 2006.⁴

Following the Arab uprisings, in a context of increased migratory pressure towards Europe, the EU has strengthened its external migration policy. In May 2015, the European Commission presented the *European Agenda on Migration*, built upon the traditional assumptions (i.e. reducing migratory flows and developing legal migration).⁵ Cooperation with African countries is embedded in the 2014 *Khartoum Process*, and in the 2015 *EU-AU Valletta Summit*.⁶ In March 2016, in response to the Syrian crisis, the EU agreed with Turkey for rapid return of all migrants not in need of international protection crossing from Turkey to Greece.⁷

Here, it is worth stressing that the MPF set out in June 2016 is meant to collect, rationalise, and further develop previous actions and resources.⁸

Compared to the initiatives taken in the early 2000's, the MPF contains a positive new feature, as it frames relations with non-EU states through *compacts*, tailored to each partner country's needs, thus reflecting that countries of origin and transit of migrants face different challenges that require specific responses. The MPF is a platform to implement political packages, technical and legal agreements, making full use of all EU instruments. To date, the EU has elaborated compacts with a number of priority third countries, such as Niger, Nigeria, Mali, Ethiopia, and Senegal.⁹ The EU also plans to conclude compacts with, among others, Algeria, Egypt, Eritrea, Libya, and Sudan.

Nevertheless, the innovative nature of the MPF ends here. Despite the EU statements to the contrary, the *status quo* of migration and asylum policies remains mostly unaltered. Although terms and expressions have been revised from time to time (*comprehensive approach, deal, compact*), the aims and methods of the EU strategy have hardly changed: in return for economic assistance, the EU expects from its partners a firm control of their

² European Council, Presidency Conclusions, Tampere, 15/16.10.1999, SN 200/99, para 11.

³ Council of the EU, Global Approach to Migration, 13.12.2005, Doc 15744/05. In 2011, the Commission presented a renewed Global Approach to Migration and Mobility (GAAM).

⁴ The Rabat Process was launched on 10/11.7.2006.

⁵ European Commission, A European Agenda on Migration, Brussels, 13.05.2015, COM (2015) 240 final.

⁶ The Khartoum Process was launched on 28.11.2014.

⁷ Council of the EU, EU-Turkey Statement, 18.3.2016, Press Release, 144/16.

⁸ European Commission, A New Partnership Framework with third countries under the European Agenda on Migration, 7.6.2016, COM(2016) 385 final. The European Council endorsed the proposal on 28.6.2016.

⁹ First compacts were concluded with Jordan (4.2.2016) and Lebanon (15.11.2016) in response to the Syrian crisis. The compacts focus on strengthening the economic resilience of Jordan and Lebanon, which host around 1,3 and 1,5 million Syrians, respectively. Financial support is provided by, *inter alia*, the *EU Regional Trust Fund in response to the Syrian Crisis* (€1 billion).

borders to curb migratory flows to Europe. The point is whether the EU commitment of win-win relationships with third countries really applies this time.

MPF OUTCOMES: THE CARROT AND STICK APPROACH

The main purpose of the MPF is to lay the foundations for a new balanced and mutually beneficial partnership with non-EU countries. The MPF includes actions to be undertaken both in the short term (aimed at increasing the return of irregular migrants and dismantling traffickers/smugglers' networks), and in the long term (by supporting development in third countries).¹⁰ However, as in the past, the imperative goal is to stem migration flows to Europe.

Notwithstanding the original intent, the 1999 Tampere Summit and the resulting measures revealed in their practical implementation a predominantly defensive stance on migration. In March 2016, the Court of Auditors stated that security and border protection constituted the chief elements in the EU migration spending until 2014, and this explained, at least partly, the reluctance by third countries to engage constructively in the migration domain.¹¹

Regarding the compacts so far concluded under the MPF, actions to restrain migratory movements and strengthen border controls continue to be a primary issue for the EU funding, while the EU action is still limited in addressing the push factors of migration.

Moreover, the compacts with third countries are marked by a renewed focus on conditionality. Conditionality has permeated the EU external policy since 2000. In June 2002, the Seville European Council introduced the concept of negative migration conditionality, thereby hampering financial assistance to non-EU countries in case of an “*unjustified lack of cooperation in joint management of migration flows*”.¹² The use of conditionality emerges still more strongly from the MPF, which expressly refers to a mix of positive and negative incentives (*more for more / less for less*). Accordingly, the EU relations with third countries are guided by their “*ability and willingness to cooperate*” on border management and to ensure notably readmission and return.¹³

The same logic applies for the draft Regulation establishing a Resettlement Framework of non-EU nationals in need of international protection, given that the annual determination of third countries from which resettlement might take place would be based on a range of criteria, especially the capacity of third partners to tackle the massive inflow of migrants.¹⁴

Lastly, the EU funds on migration and asylum show an intricate set of budget lines, institutionally scattered among different actors. This leads to a lack of coordination and a duplication of efforts, making it difficult to measure the impact of each EU funding and to quantify exactly the overall EU spending.¹⁵ According to the Court of Auditors, the EU migration spending until 2014 suffered from an unclear strategy, poor monitoring, and gaps between supports to third countries' governments and tangible outcomes for migrants.¹⁶

¹⁰ Footnote 7, p. 6.

¹¹ European Court of Auditors, EU external migration spending in Southern Mediterranean and Eastern Neighbourhood countries until 2014, Special Report No 9/2016, 17.3.2016, para 36.

¹² European Council, Presidency Conclusions, Seville, 21/22.6.2002, Doc/02/13, para 36.

¹³ Footnote 7, p. 6.

¹⁴ European Commission, Proposal for a Regulation establishing a Union Resettlement Framework, 13.7.2016, COM(2016) 468 final, 2016/0225 (COD).

¹⁵ Clare Castillejo, *The EU Trust Fund for Africa: A Glimpse of the Future for EU Development Cooperation* (Bonn: German Development Institute, 2016), https://www.die-gdi.de/uploads/media/DP__22.2016.neu.pdf.

¹⁶ Footnote 10, para 48.

The MPF financing scheme is characterised by the same weakness. Under the MPF, financial aid for African countries is provided through the *EU Emergency Trust Fund for Africa* (EUTF) (2015-2019), set up at the 2015 EU-AU Valletta Summit,¹⁷ and the *External Investment Plan*, proposed by the European Commission in September 2016.¹⁸

The EUTF aim is both to overcome fragmentation in the EU migration budget, built on the existing *Rabat* and *Khartoum Processes*, and facilitate the fulfilment of the new compacts. However, its actual implementation raises a number of questions. Compared to the *EU Facility for Refugees in Turkey*, linked to the EU-Turkey deal (€3 billion + €3 billion by 2018),¹⁹ the EUTF (that covers 26 African countries) has a more limited budget, at present amounting €2.8 billion. The EU envisages mobilizing €8 billion by 2020, but this intent will be accomplished primarily by redirecting the current available development funds. Furthermore, to date, Member States' contributions have remained far from their official commitments, consisting only in 5% of the envisaged €1.8 billion.²⁰

As to the proposed *External Investment Fund*, it is not yet clear whether the European Commission will be able to unlock from its funds, as promised, over €40 billion until 2020, potentially reaching €62 billion.²¹

INTEGRATED BORDER MANAGEMENT: THE MYTH OF “ZERO IMMIGRATION” POLICY

Reflecting the security concerns of Member States, the EU has over time strengthened external borders controls both at the EU level, by preventing irregular flows to Europe, and the international level, by reinforcing the capacities of third countries to manage migration.

Concerning cooperation between Member States, attention is drawn to the EU naval operations in the Mediterranean Sea.

Among the missions coordinated by the EU border Agency FRONTEX, the Joint Operation *Triton*, that replaced the rescue Italian Operation *Mare Nostrum* in November 2014, marked the shift from *rescue* to *border* management, its main task being border control.²² On 26 May 2015, FRONTEX adopted a new operational plan for *Triton* with an increased budget, additional assets, and an expanded range of action (from 30 up to 138 nautical miles from the Italian coast, almost reaching the extent that had been previously covered by *Mare Nostrum*).²³ Despite these developments, the rationale behind its institution remains unchanged: *Triton*'s mandate is to support Italy with sea border surveillance,

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https://eeas.europa.eu/sites/eeas/files/factsheet_ec_format_eu_emergency_trust_fund_for_africa_2017.pdf, accessed 15.07.2017. See

¹⁸ European Commission, Strengthening European Investments for jobs and growth: Towards a second phase of the European Fund for Strategic Investments and a new European External Investment Plan, 14.9.2016 COM(2016) 581 final.

¹⁹ See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/frit_factsheet.pdf, accessed 15.7.2017.

²⁰ European Commission, Member States and other donors' pledges, 3.7.2017, https://ec.europa.eu/europeaid/eutf-pledged-contribution-eu-member-states-and-other-donors-march-2017_en, accessed 15.7.2017.

²¹ European Commission, Towards a new Partnership Framework with third countries, Frequently Asked Questions, 7.6.2016, http://europa.eu/rapid/press-release_MEMO-16-2118_en.htm, accessed 15.7.2017.

²² On 18.10.2013, Italy launched the *Mare Nostrum* Operation in order to cope with the humanitarian emergency in the Sicilian Channel. In November 2014, the Joint Operation *Triton* replaced two Operations, *Hermes* and *Aeneas*. See Roberta Mungianu, “Frontex: Towards a Common Policy on External Border Control”, *European Journal of Migration and Law* 15 (2013), 359-385.

²³ See <http://frontex.europa.eu/news/frontex-expands-its-joint-operation-triton-udpbHP>, accessed 15.7.2017.

whereas rescue activities continue to be incidental, complementing the rescue operations conducted by Italy.²⁴

The EUNAVOR MED Operation *Sophia*, launched in June 2015, was conceived through a similar prism.²⁵ Its core task is to identify and capture vessels used by migrant traffickers or smugglers.²⁶ Finally, in October 2016 FRONTEX was renamed *European Border and Coast Guard Agency*, with the goal of increasing its effectiveness. Nevertheless, even if by 2020 the Agency budget has doubled (€322 million) and its staff has increased to approx. a thousand people, the change of FRONTEX's name has not been followed up by increased powers, because the Agency will continue to merely support the border activities of the Member States.²⁷

As to cooperation with third countries, the EU is fully engaged in the deployment of civilian missions to block migratory flows.

Since 2012, the EUCAP Sahel Niger assists the Nigerien authorities in improving their capacities to stem terrorism, organised crime and, from 2015, irregular migrations.²⁸

The EUBAM Libya, launched in May 2013, then downsized in 2014 (due to the security situation in Libya), received in February 2016 the mandate to support the Libyan authorities in the field of security sector reform, focusing on police, criminal justice, border security and migration.²⁹

In June 2016, Operation *Sophia* started training the Libyan Coast Guard and Navy, in order to reinforce their capabilities to curb trafficking and smuggling, to perform search and rescue activities at sea, and to upgrade security in Libyan territorial waters.³⁰

Besides the considerable financial costs, the integrated border management is neither sufficient nor effective. As a matter of fact, restrictive immigration policies have always failed to meet their stated objectives. Indeed, the unintended effect of strict border controls is the diversion of the migratory flows through other usually more dangerous routes, thereby increasing human trafficking.

OBSTACLES TO COOPERATION WITH THIRD COUNTRIES

Every year almost 500,000 foreign nationals are ordered to leave the EU, as they have entered or are staying irregularly. However, only less than 40% of them are sent back to their home country or to the country from which they travelled to the EU.³¹

The gap between the return decisions and their effective application have led the EU

²⁴ Efthymios Papastavridis, "Fortress Europe and Frontex: Within or Without International Law?", *Nordic Journal of International Law* 79 (2010), 75-111.

²⁵ Council of the EU, Decision (CFSP) 2015/972 of 22.6.2015 launching the EU military operation in the southern Central Mediterranean (EUNAVFOR MED), Official Journal 23.6.2015, L 157/51.

²⁶ To date, the Operation is in its second phase. The first phase intended to build a comprehensive understanding of smuggling activity and methods. Future phases, subject to the UN Security Council authorisation, will include taking operational measures inside coastal states territory.

²⁷ European Parliament and Council of the EU, Regulation (EU) 2016/1624 of 14.9.2016 on the European Border and Coast Guard, Official Journal 16.9.2016, L 251/1. See Sergio Carrera, *A European Border and Coast Guard. Addressing Migration and Asylum Challenges in the Mediterranean?* (Brussels: CEPS, 2010).

²⁸ Council of the EU, Decision 2014/482/CFSP of 22.7.2014 on the EU CSDP mission in Niger (EUCAP Sahel Niger), Official Journal 23.7.2014, L 217/31.

²⁹ Council of the EU, Decision 2016/207/CFSP of 15.2.2016, amending Decision 2013/233/CFSP on the EU Integrated Border Management Assistance Mission in Libya (EUBAM Libya), Official Journal 16.2.2016, L 39/45.

³⁰ Political and Security Committee, Decision (CFSP) 2016/1635 of 30.8.2016 on the commencement of the capacity building and training of the Libyan Coast Guard and Navy by the EU military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), Official Journal 10.9.2016, L 243/11.

³¹ European Commission, EU Return Policy, 28.3.2014, COM(2014) 199 final.

to conclude with third countries the so-called *readmission agreements* (EURAs), i.e. agreements establishing procedures for the return of both own nationals and nationals of other countries in transit who do not, or no longer satisfy the conditions for entry to, or residence in the territory of the requesting party. The perspective of long and complex negotiations has induced the EU to include specific readmission clauses in international treaties concerning forms of association or cooperation, as a mean to encourage its partners to execute their readmission obligations avoiding the risk to lose the benefits foreseen by the whole treaty.

Since 1999 the EU has concluded 17 EURAs.³² The Cotonou agreement, which is the framework for the EU relations with ACP countries, also contains provisions dealing with the return of irregular migrants to their country of origin (article 13).

Nonetheless, the EU achievements are not very consistent. Negotiating an agreement can take several years, as in the case of Morocco where talks started in 2000 are still ongoing, with little prospect of a prompt conclusion. Non-EU states usually refuse to readmit citizens of other countries who have transited through their territory before reaching Europe. In addition, Member States often do not apply EURAs, opting for their own bilateral agreements, thus undermining the credibility of the EU readmission policy. Finally, EURAs are only partly respected by third countries: failure to issue travel documents to allow readmission, and other procedural obstacles limit deeply their effectiveness.

Especially after 2011, with a view to increase expulsion rates, the EU and its Member States for their part conclude, instead of formal readmission agreements, new instruments and tools on readmission, such as informal deals, non-legally binding memoranda and standard operating procedures. The recourse to these new instruments intends to overcome problems faced in negotiating EURAs. Informal methods of cooperation allow the EU and its Member States to bypass both the legal requirements of article 218 TFEU, under which the consent of the European Parliament is necessary for concluding EURAs, and domestic debates. Moreover, non-EU partners have no interest in publicly cooperating with the EU, because EURAs do not meet the favour of their populations.

Improving readmission through formal or informal instruments is also a basic aim of the MPF. However, one year after its adoption, the progress reports on MPF reveal an incoherent picture.³³

Cooperation with Niger, a key transit country of migrants, is effective enough. There has been a clear decline in departures of migrants from Agadez (from 70,000 departures in May 2016 to about 6,500 in January 2017). However, there are reasons to be cautious, as potential alternative routes need to be monitored both via Niger and through its neighbouring countries.

Cooperation with Nigeria is complicated. Nigeria is an important country of origin of migrants, with over 23,000 illegal entries in 2015, and more than 37,000 in 2016. Until April 2017, about 5,200 Nigerians have already entered the EU irregularly. In terms of readmission, cooperation is uneven. In 2015, only 28% of return decisions resulted in effective return. In 2016, the return rate is even lower (26.5%). Although negotiations on a EURA opened in October 2016, the second round of talks, planned for December 2016, has been postponed several times by Nigeria.

Partnership with Senegal is problematic. In 2015, over 6,300 migrants entered the EU, while 10,300 were registered in 2016, and approximately 400 already arrived in Italy since

³² Sergio Carrera, *Implementation of EU Readmission Agreements: Identity Determination Dilemma and the Blurring of Rights* (Cham, Switzerland: Springer International Publishing AG, 2016).

³³ European Commission, Fourth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration, 13.6.2017, COM(2017) 350 final.

April 2017. In 2016, despite an increase in return decisions, the return rate dropped from 12.5% in 2015 to 9% in 2016.

Cooperation with Mali, a country of origin and transit of migrants, is quite inconsistent. Over 6,500 migrants in 2015, 10,000 in 2016, and 1,800 until April 2017 entered the EU. A formal EURA was reached in December 2016, but Mali has not yet signed Operating Procedures on readmission. The number of return decisions in 2016 remains stable as in 2015, but only a small proportion of migrants have been effectively returned (11.4% in 2015, 4.8% in 2016).

Lastly, cooperation with Ethiopia is controversial. In 2015, about 2,700 migrants arrived from Ethiopia, while 3,600 irregular entries were recorded in 2016. In spite of these figures, progress on return is very low (12.2% in 2015, 9.8% in 2016).

THE LACK OF INCENTIVES FOR THIRD COUNTRIES

The lack of incentives is the main reason for excessive delay in negotiating EURAs and, more generally, for third countries' reluctance to cooperate with the EU. The EU should take into account more seriously the third countries' point of view on the migration issue and should better understand the underlying causes driving migration.

At least three factors need attention. Firstly, less irregular migration implies for third countries a sharp reduction of the remittance flows, the amount of which (over \$500 billion) overshadows the overall volume of development aid, becoming a reliable source of external finance for many non-EU countries.³⁴ Secondly, irregular migration nourishes an informal illegal economy that generates billions of euros, representing a significant resource for local communities, as the situation in Niger clearly demonstrates.³⁵ Thirdly, the EU should change the perspective according to which migration can be mitigated by allocating development aid. Development, at least in the short term, leads to a surge in migration, in so far the economic growth increases people's aspirations to migrate to wealthier economies in Europe. The so-called *migration hump* phenomenon tends to disappear only at a later stage when the development in the country of origin reaches a more stable level.³⁶

That is why the EU should rebalance its strategy, by offering a broader package of incentives to third countries.

Good results have been achieved so far in the assisted voluntary return and reintegration (AVVR) support.³⁷ However, the lessons learnt from the past indicate that the AVVR programs often overlap, thereby creating confusion around beneficiary targeting and substantial distortions, while insufficient post-return monitoring hinders a proper assessment of their results.

Equally, the EU should support African sub-regional organisations with a greater financial contribution to better manage regular migration, since it is widely known that in Africa 84% of movements are intra-regional.³⁸

The real added value of the EU strategy would be to provide credible avenues of legal migration, in terms of worker mobility, visa facilitations, recognition of diplomas and qualifications, as well as humanitarian admission for persons in need of international

³⁴ "Annual Remittances Data," World Bank, last modified April 2017,

<http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>.

³⁵ Fransje Molenaar, *Irregular Migration and Human Smuggling Networks in Niger*, CRU Report (The Hague: Clingendael, 2017).

³⁶ Vincent Chetail, "Paradigm and Paradox of the Migration-Development Nexus: The New Border for North-South Dialogue", *German Yearbook of International Law* 52 (2008), 190.

³⁷ To date, more than 4,000 migrants returned from Libya to their countries of origin.

³⁸ The EU supports the free movement of persons in the ECOWAS region (€26 million) and in the IGAD region (€10 million).

protection. In its official statements, the EU has several times endorsed the importance of proposing legal migration channels. But these assertions are not reflected in practice. The *Global Approach to Migration and Mobility*, adopted by the European Commission in 2011, had only limited success and a coherent approach continues to be lacking.³⁹ The *European Agenda on Migration* in 2015, although recognizes that “a clear and well implemented framework for legal pathways to entrance in the EU will reduce push factors towards irregular stay and entry”, contains just vague promises.⁴⁰ Similarly, the issue is not dealt with in detail by the MPF, but only regarded as a positive incentive for third countries that cooperate in fighting against irregular migration.⁴¹ The Member States’ resistance to offer labour opportunities to third country nationals often undermines the EU coherence in this field, thus affecting the overall credibility of the EU external action.

MPF COMPATIBILITY WITH HUMAN RIGHTS OBLIGATIONS

The EU external migration policy *per se* does not violate human rights obligations, since the EU instruments formally comply with international norms, enshrined in the EU Treaty and legislation. Nevertheless, in practice no clear mechanisms ensure that human rights are fully respected at any time. The risk is that containment initiatives, aimed at curbing migration flows, could reduce the protection for refugees and forced migrants.

Concerning borders controls, the EU is bound by the principle of *non-refoulement*, under which no return to the country of origin or transit can take place if the concerned person is liable to be subjected to inhuman or degrading treatment.⁴² Consequently, the EU objective is to prevent arrivals, by getting third countries to intercept migrants before they reach the EU borders, so that the non-refoulement obligation would not be triggered. Then, the training offered to the Libyan Coast Gard and Navy allows Member States to *circumvent* their human rights obligations, given that migrant boats intercepted at sea are taken back to Libya by Libyan vessels. Similar concerns raise the EU-Turkey deal, whose objective is to create a *buffer zone* outside the EU, by calling upon Turkey to “take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU”.⁴³

As to EURAs and other informal agreements, although they include, to a variety of degrees, express reference to international human rights norms, in their actual implementation they generally lack monitoring and accountability measures, thereby threatening the human rights of migrants and asylum-seekers.⁴⁴ A key weakness of EURAs is that they do not prevent the so-called *domino effect*, occurring if the third country of return expels one person to a state where he/she could be subjected to inhuman and degrading treatment.

Here again the EU-Turkey deal is instructive. Formally, the deal prohibits collective expulsions, requiring Greek authorities to process any application for asylum: only migrants not applying for asylum or whose application has been declared unfunded or inadmissible

³⁹ See, for example, the Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (2009/50/EC of 25.5.2009) and the Directive for the purpose of employment as seasonal workers (2014/36/EU of 26.2.2014).

⁴⁰ See footnote 4, p. 6.

⁴¹ See footnote 7, p. 6 and 8.

⁴² See European Court of Human Rights, *Case of Hirsi Jamaa and Others v. Italy* (Application no. 27765/09), Judgment 23.2.2012.

⁴³ See footnote 6, point 1. Since its implementation, the number of refugees and migrants going to Europe via Turkey has consistently decreased (from around 885,000 in 2015 to 9,000 in the first six months of 2017). See European Commission, Sixth Report on the Progress made in the implementation of the EU-Turkey Statement, 13.6.2017, COM(2017) 323 final.

⁴⁴ European Commission, Evaluation of EU Readmission Agreements, 23.2.2011, COM(2011) 76 final, p. 4.

will be returned to Turkey. Despite this, the deal entails two problems. On the one hand, according to official data, over 60,000 people, mostly from Syria, Iraq, and Afghanistan, are stranded on Greek islands, waiting for asylum claims to be processed, and still living in overcrowded migrant reception centres.⁴⁵ On the other hand, until February 2017, the number of migrants returned to Turkey was close to 1,500, including about 60 Syrians.⁴⁶ But Turkey can hardly be considered a *safe third country*, as it retains a geographical limitation to its ratification of the 1951 UN Refugee Convention, which means that only those coming from European countries can be given refugee status. Instead, since October 2014 Turkey has placed Syrian refugees under a temporary protection regime, which incidentally excludes other nationalities.

Concerning the compacts concluded under the MPF, the EU aim is to provide third countries with significant resources to take charge of migrants and asylum seekers. However, the EU efforts have had so far a very limited impact. Libya is a key test in this respect. In February 2017, the European leaders announced a plan to finance migration projects in order “to ensure adequate reception capacities and conditions in Libya for migrants”.⁴⁷ Nevertheless, according to the UN, the situation in Libya (which is not a contracting party to the Refugee Convention) constitutes a human rights crisis, where migrants are subjected to arbitrary detention, torture, unlawful killings, and sexual exploitation.⁴⁸

CONCLUSIONS

Past and recent experience shows that the EU strategy continues to be mainly focused in containing migratory flows, while development assistance is regarded as a reward for countries that honour their commitments to curb irregular migration. However, migration is not a problem to be solved only with draconian and hard-hitting actions. Migration is a complex phenomenon, with no prospects of ceasing in the coming decades, that requires a balanced combination of measures and a mutual beneficial cooperation between the EU and third states.

At least, three problems still persist.

Bearing in mind the different EU policies on migration and the distribution of external competences between the EU and its Member States, increased *coordination* and better *rationalisation* are essential to avoid diversion from declared objectives, financial fragmentation, duplication of efforts and lack of transparency, thereby ensuring further effectiveness of the EU strategy.

A better *balance* between the EU priorities is needed. Strengthening the external borders, increasing returns of irregular migrants, and reinforcing third countries' capacities to manage migration are the legitimate objectives of the MPF, to the extent that any failure to meet these targets would cast a shadow over the EU authoritativeness. Notwithstanding this, the opening of legal migration channels, both for humanitarian and non-humanitarian reasons, would address the interests of third countries, so rebalancing relationships and reinforcing the coherence of the EU external policies.

⁴⁵ National Statement of Greece at the 67th Executive Committee of the UNHCR, <http://www.unhcr.org/57f784867.pdf>, October 2016.

⁴⁶ The returned persons had received negative asylum decisions or had not applied for asylum in the first safe country.

⁴⁷ European Council, Malta Declaration on the external aspects of migration: addressing the Central Mediterranean route, 3.2.2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03-malta-declaration/>, accessed 15.7.2017.

⁴⁸ UN Mission Support in Libya and Office of the UN High Commissioner for Human Rights, *Detained and Dehumanised. Report on human rights abuses against migrants in Libya*, 13.12.2016, http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf, accessed 15.7.2017.

Lastly, *monitoring* and follow-up mechanisms of the EU activities (such as funded projects, joint border operations, and EURAs) are required in order to assess their actual impact, as well as their compliance with human rights obligations. This issue arises in particular in relation to the migration compacts concluded under the MPF. Given their non-binding and informal character, these packages have never been presented, debated, nor endorsed by the European Parliament, thus escaping from the prerogatives of political monitoring of this Institution.

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A BLOCKCHAIN “INTELLIGENCE” ANALYSIS

Horia Mircea BOTOS¹

ABSTRACT:

WE ARE LIVING IN AN AGE OF SPEED, SECURITY AND TECHNOLOGY. AFTER THE CREATION OF THE BITCOIN OF 2009, THE WORLD GOT IN TOUCH WITH BLOCKCHAIN.

BLOCKCHAIN IS A DATABASE THAT RECORDS THE GROWTH OF THE LAST ACTION FOR AN ACTIVITY, SECURING IT FROM TAMPERING AND REVISIONS. THESE RECORD LISTS ARE ALSO KNOWN AS BLOCKS AND HAVE A TIMESTAMP AND A LINK TO THE LAST BLOCK THEY WERE CONNECTED TO.

DUE TO THE FACT THAT BLOCKCHAIN IS BEHIND BITCOIN AND WAS PICKED UP BY NASDAQ, IT WAS FOUND THAT BLOCKCHAIN IS THE SUSTAINABLE AND SECURE WAY TO DEVELOP THE FUTURE. IN ORDER FOR THE NEXT GENERATIONS TO BE PROTECTED, THE BUSINESS WORLD NEEDS TO UNDERSTAND AND DETERMINE THE BEST USE FOR THIS CRYPTOGRAPHICALLY SECURED CHAIN.

THE PAPER WILL DESCRIBE THE DATABASE, FIELDS OF USE AND SUSTAINABLE DEVELOPMENT OF THE FUTURE.

KEY WORDS: BLOCKCHAIN, BITCOIN, SECURITY, INTELLIGENCE

INTRODUCTION

The first instance when Blockchain was put into use was for Bitcoin and in Bitcoin's announcement paper this mechanism was described for the first time by Satoshi Nakamoto. Blockchain is the technology that is behind the security protocols used by Bitcoin.

Blockchain is a database of transactions that take place in all nodes participating in the system platform that is behind the Bitcoin protocol. A full copy of the currency's Blockchain contains every transaction executed in the currency. Backtracking this information, you can find out the value that belongs to each address at a point in time. Thus the Blockchain can record and track assets in a business network. Blockchain can track all kinds of assets, from the tangibles as cash, cars, land, to the intangible ones as intellectual property or those of a virtual nature. Theory and practice have shown that until now, anything of value can be followed and transmitted via a Blockchain network, reducing the risk and diminishing the costs involved.

The need for such a system arose throughout history, of instruments of trust that permit an efficient means of exchanging values and protect both seller and buyer. The primary forms of this need appeared with the appearance of money. In order to ensure this humankind

¹ External Teacher, PhD, Babes Bolyai University, horia.botos@gmail.com

had minted coins, paper money, letters of credit and the list goes on until the 20th century when in virtual banking system came into play. The virtual system made the distance between buyer and seller small, almost eliminating it, but the security limitation remained.

Worldwide, once that the banking system was put into place registered a transaction volume growth, that as time goes on become more complex, thus more vulnerable, sometimes inefficient and expensive. The virtual world has grown in mobility, but the financial system did not become cheaper in order to help this trend. The development of Artificial Intelligence and the rise of the IoT (Internet of Things) will require a step-up in tracking and security of transactions.

THE BLOCKCHAIN CHARACTERISTICS

Blockchain is what we find as the base of the "digital gold" called Bitcoin. This means that, what it did for one crypto coin it can do the same for others. So, as with cars, cellphones, the internet before it, common people are not interested to understand how the Blockchain technology works, they are interested in using it and the advantages that they gain from this².

Like the internet (or your car), you don't need to know how the Blockchain works to use it. However, having a basic knowledge of these new technology does, shows you why it's considered revolutionary. This chapter will work as a guide to help you understand the Blockchain.

Think of Blockchain as an adaptive mechanism that continuously conciliates the information of the transaction database. This happens because a Blockchain database is stored in several locations and not stored in any single location, thus they are public and verifiable. There is no centralized version and because of this it is accessible to anyone and it is extremely hard to corrupt. This technology was so designed that security and the user's private identity to be protected.

Many have made correlations between the internet and the Blockchain technology. They have made this correlation because they have similar robust technologies at their base: they store blocks of information that are identifiable across the user network and because of this neither can be controlled by any single entity and they do not have any point of failure. In the case of Blockchain, since 2008 since it was first used to power Bitcoin, it has operated without disruption. All Bitcoin problems that were identified in its almost 10 years of use, any problems that arose, were because of bad intentions or human error. It's the same with the internet, which has proven itself durable for almost 30 years.

If we analyze the internet's development record, it can be assumed that Blockchain will most probably have the same development trajectory.

Because of the technology that is at its core, Blockchain is transparent and incorruptible. The Blockchain has a self-auditing system designed for the digital age and leaving a digital value, reconciliation of the transaction takes place at regular intervals of 10 minutes. In this public structure you will find embedded information that makes it transparent. Because of the use of a public network, any change that is tried to be made to the network needs a huge amount of computing power, thus making it incorruptible.

BLOCKCHAIN NODES

The added value of the Blockchain technology is that it has perfected the use of nodes. Nodes are the connected network formed between computers that the Blockchain clients use, and in this process they perform the validation on transactions and they relay the information. Every time a computer joins the Blockchain network, a copy of the Blockchain is downloaded. Taking into account the similarities that it has with the internet, Blockchain

² <https://www.coindesk.com/information/what-is-blockchain-technology/>

creates through this process a network of its own, that we can call a second lever network, which work after the internet network function but with a wholly different perspective. Every node acts as an administrator with it joining the network voluntary, a trait that gives the Blockchain its decentralized trait. It is true also that each node gains Bitcoins for its part in this network, so we can say that the participation is incented.

There is a common misconception about nodes, in the fact that it's said that they mine for Bitcoin. As the Blockchain was conceived in order to sustain and help the development of Bitcoin, this is proven to be false. Nodes receive Bitcoins by solving computational tasks³.

At this moment it is believed that there exist over 500 Bitcoin like crypto currencies, and with recent developments in technologies, we have seen a rise in the use of Blockchains. Fin-tech structures see a large potential in it as the World Bank announces huge investments in the sector. Fin-tech as seen an added value in this technology as it removes the middleman in transactions, as the transactions are closely connected to the identification processes which is made by means of the Graphical User Interface of its users, the wallets.

The nodes give Blockchain another characteristic: security. Because of its data storing in its second level network and the use of the nodes, the data does not risk centralization or corruption, as explained before, it would need to big of a computational power to make any change. In order to access the Blockchain the user needs a randomly generated string of numbers that is called a public key, which is also their Blockchain address. In the case of the Bitcoin there is a private key, that acts as a password that give the user access to its digital assets. But as everything in this virtual age, you will need to safeguard this key in order to be sure that hackers or ill will, will not make your assets disappear. This two access key system is what gave Bitcoin its rise to the top of the crypto currency pyramid and has managed to keep it there. Even with the recent tries of governments of licensing Bitcoin use and trying to track its activity, the distributed ledger put by Blockchain at the basses of the currency as kept it safe and private.

APPLICATION OF BLOCKCHAIN

After seeing what it can do through Bitcoin, the Blockchain technology was attributed a large potential to improve business operating models. The Blockchain ledger was considered in the beginning a disruptive technology (a game changing technology), but instead it showed that it is a foundation for future technologies. Blockchain has the potential to help create economic and social systems; proofs of concept for such products are starting to reach peek point.

Blockchain can be used in multiple fields. Because of this, certain Blockchain related applications or products are considered part of a disruptive innovative business solution wave, as these solutions have lower costs of implementation, taking existing business models by surprise. Bitcoin has established Blockchain as the optimal business method of processing digital transactions.

The Nodes are an automatically notarized ledger⁴. Because of this the technology is trustworthy and makes it possible for the user to have less capital tied in any action, risk and intent of fraud are diminished as the effort does not justify the gain. Some of the fields in which they are possible to be used are: tax collection, land sale registry, insurance, crypto currencies, Banking, IoT, medical records, data storage or digital art.

In banking for example UBS(United Bank of Switzerland) has a specialized research lab dedicated to exploring how Blockchain can be used in financial services to reduce costs and facilitate efficiency. Also the Big Four accounting firms are interested in the Blockchain

³ Swan Melanie, *Blockchain: Blueprint for a New Economy*, Preface X

⁴ Swan Melanie, *Blockchain: Blueprint for a New Economy*, 1

technology. Each of them accepts Bitcoin payment, have installed Bitcoin ATMs in their offices, etc. trying to get their employees accustomed with the technology as they start using smart contracts and digital currencies, more and more⁵.

The smart contract⁶s are Blockchain based contract that are executed or enforced without human interaction (partially or fully). This contract was described by the IMF as a way to optimize contract use and reduce moral hazards. The practice is not widespread, thus making it unclear if they are recognized or not.

Another application for it would be the registration of copyrights. As Blockchain technology can create a permanent, public, transparent ledger of data, it can be used to store this information that from the beginning is public and in the market. This would make tracking use much easier; especially in areas where illicit activities are recurrent as in the music business⁷.

In August 2016 a research of the Technical University of Munich published that the disruptiveness brought on by the Blockchain technology was about 1.55 billion USD that went into Blockchain related ventures. The startups were from the fields of finance, insurance, IT&C and professional services.

Another interesting use is as a national currency. Estonia is at the moment considering developing the ESTCOIN, a state developed and backed currency that would advance their economy and make transaction with the country safer. If this happens, Estonia will issue the world's first government backed initial coin offering.

As Blockchain is still a new technology, the fact that the financial institutions and states are looking into its use show that it is here to stay and that it has not reached its full service potential yet.

BLOCKCHAIN INTELLIGENCE – THE CONCLUSION

Intelligence is a process that was reached the civilian practice from the military intelligence agencies as a close path, made of nodes. The steps are: Direction (where the objectives determined), collection of the data, processing, analysis and dissemination.

From the Intelligence point of view, our requirement was to analyze the development of the Blockchain since its release in 2009. We have covered its evolution, state of fact and the future developments of the Blockchain technology.

The data was collected and processed from a theoretical point of view, as without a clear practical example this is impossible. But the collected scientific data once analyzed has shown the development this technology has had until now and has shown that with the growing interest in it, usability is only in its primal stages. As shown in the applications of this technology, it is considered that in the future the uses will be affecting many aspects of our lives so that they are kept private, secure, direct connection with other users and with cheaper costs.

Analyzing all these facts we have to face it that in a world where everything is moving fast and we have terrorists and cyber terrorist attacks, the world needs something that can protect them. A limitation of the technology is that Blockchain can protect evil dwellers as easy as it can protect the common folk. But its security protocol will at least give you the opportunity to do whatever is possible from your view to protect your resources (money or goods).

Trying to have a control and general idea of the Blockchain at this point is very hard, as it is still developing. The volume of resources invested are high, developments are taking

⁵ Swan Melanie, *Blockchain: Blueprint for a New Economy*, 11

⁶ Swan Melanie, *Blockchain: Blueprint for a New Economy*, 16

⁷ Swan Melanie, *Blockchain: Blueprint for a New Economy*, 10

place, so I would recommend to either invest in the Blockchain technology or start using it before it gets to be mainstream.

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SOCIO-ECONOMIC BARRIERS, NATIONALISM AND FAILURE OF EUROPEAN INTEGRATION POLICIES

Ionuț Daniel MOLDOVAN¹
Adrian Daniel STAN²

ABSTRACT

FACING NEW KINDS OF MIGRATION FLOWS, FROM MORE DISTANT REGIONS, THE DEBATE ABOUT MIGRATION AND INTEGRATION HAS BEEN GROWING IN THE EUROPEAN UNION. NOWADAYS, PERCEPTION IS ESSENTIAL AND EACH ANALYST EXPRESSES HIS OPINION, THERE IS A TENDENCY TO EXPLAIN INTEGRATION ISSUES IN ETHNO-CULTURAL AND SOCIO-ECONOMIC TERMS. MIGRANTS' ECONOMIC INTEGRATION ENVELOPES THEIR MOVEMENT IN THE SOCIETY CLASSES, ECONOMIC DISCRIMINATION IS A BARRIER TO THIS MOVEMENT AND THUS IMPEDES THEIR ECONOMIC INTEGRATION. A SOCIALLY COHESIVE EUROPEAN SOCIETY IS ESSENTIAL IN ORDER TO ACHIEVE SUCCESSFUL INTEGRATION.

THE PURPOSE OF THIS PAPER IS TO ASSESS THE RELATION BETWEEN SOCIO-ECONOMIC BARRIERS AND NATIONALISM AND HOW THEY CAN LEAD TO THE FAILURE OF INTEGRATION POLICIES IN EUROPEAN UNION. IN THE FIRST PART OF THIS PAPER WE WILL DISCUSS ABOUT THE CONCEPT OF INTEGRATION, MAKING AN OVERVIEW OF DIFFERENT CONCEPTS AND APPROACHES. IN THE SECOND PART WE WILL IDENTIFY THE POSSIBLE SOCIO-ECONOMIC BARRIERS TO EFFECTIVE INTEGRATION AND WE WILL TRY TO SHOW HOW THE INSTALLATION OF THESE BARRIERS CAN LEAD TO THE INCREASE OF NATIONALISM AMONG MIGRANTS. DOES AN INTEGRATION DEFICIENCY CONSIST OF UNEQUAL ECONOMIC OPPORTUNITIES AND DISCRIMINATION? IS THE LABOR MARKET A BARRIER TO SOCIO-ECONOMIC MOBILITY? ARE THE QUALIFICATIONS OBTAINED IN THE COUNTRIES OF ORIGIN RECOGNIZED IN THE EUROPEAN UNION? IS NATIONALISM A HINDRANCE TO INTEGRATION POLICIES? THESE ARE SOME QUESTIONS THAT WILL GUIDE US IN OUR ANALYSIS. .

KEY WORDS: MIGRANTS, NATIONALISM, SOCIO-ECONOMIC BARRIERS, MAINSTREAMING INTEGRATION. .

INTRODUCTION

In recent years, the number of migrants has increased in volume, migration flows have drawn the attention of security experts concerned with the effects of immense flows of migrants around the world. Not all EU Member States have the same way of seeing

¹ Moldovan Ionuț Daniel, PhDC, Doctoral School of International Relations and Security Studies, Babeș-Bolyai University, e-mail: ionut.moldovan22@gmail.com.

² Stan Adrian Daniel, Assistant PhD, Department of International Studies and Contemporary History, History and Philosophy Faculty, Babeș-Bolyai University, e-mail: adrian.stan@ubbcluj.ro.

emigrants, and culture, religion, history, the economy and many other things affect how they are looked at. Also, a lot of immigrants come by sea and this is why states are unevenly affected by these flows.

In the contemporary political arena where perception is key, various discourses are competing to explain integration issues in ethno-cultural vs. socio-economic terms. In recent years the populist right wing narrative, which argues that “cultural distance” prevents the successful integration of migrants, has gained ground against the liberal narrative, which considers that the root of integration failures lies in unequal economic opportunities and discrimination.³

INTEGRATION

Migration flows and policies are reciprocally related: migration flows create the need for policies to manage them, and policies, in return, shape ongoing and future migration flows. A European Agenda on Migration is clear in its recognition of the need to strengthen and develop new policies to respond to what are seen as new migratory pressures and challenges.⁴

We normally talk about integration only in the case of migrants who intend to stay for a longer period of time, which is also the case with refugees who are prevented from returning to their country of origin.

The term integration has several definitions, one of which refers to the process of providing immigrants with equal chances to access opportunities available to native-born. As such, it reflects the extent to which receiving societies are willing to go towards immigrants, accept them, and provide them with equal rights to express their behaviors and preferences along with the native-born, while potentially preserving and fully expressing of their differences.⁵ Integration is therefore accompanied by measures and policies specific to each destination country that allows or excludes immigrants in different dimensions of social life, especially in the circumstances where a change in the social life of people, can cause a change in various other aspects of human life, such as economic, cultural and political.

The political dimension that is related to the legal part mainly concerns the ways and possibilities of obtaining the rights of residents, family reunification, political participation and the right to citizenship. Here, it must be borne in mind that the political representation of migrant communities⁶, at least in the first phase, will be lacking, eliminating the possibility of modifying possible unfavorable policies.

The cultural dimension is related to religious rights of immigrants, the perceptions and practices of ethnic and religious cultural differences in the host society. The host country may accept a greater or lesser degree of cultural and religious differences of immigrant groups and may create policies in this respect.

One of the key components of the economic dimension is the labor market where migrant workers and their family members should have equal rights and opportunities, as well as domestic workers. Moreover, this dimension should also include guaranteeing access to social rights and benefits, such as the right to work, health and education.

³ Pierre Kohler, Graduate Institute of International and Development Studies Working Paper No: 07” Economic Discrimination and Cultural Differences as Barriers to Migrant Integration: Is Reverse Causality Symmetric?” 2012.

⁴ Research on Migration: A Policy Review Prof Russell King and Dr. Aija Lulle

⁵ Algan, Y., Ch. Dustmann, A. Glitz, and A. Manning *The Economic Situation of First and Second-Generation Immigrants in France. Germany and the United Kingdom* - Economic Journal. Royal Economic Society. 120 (542), (2010).“ F4-F30. 02

⁶ Political participation will be lacking and will not have electoral rights, so they will not be able to legally regulate their positions and desires.

The integration process of migrants cannot be seen only from an economic or labor perspective. Besides these two process components, there are at least two of which are of crucial importance in the success of the integration and these are social acceptance and education. All these components of the integration process are interconnected, if one of the components does not work, there is the risk that this process will eventually fail.

In the last two years, public attention and political discourse are focused on the irregular flows of immigrants entering the European Union through Italy and Greece via the Mediterranean.⁷ Most of the 1.5 million migrants are asking for asylum in various northern and western EU countries.

Europe is at the heart of two models of integration developed between Member States. The first is the assimilation model, traditionally found in France and inspired by the principle of equality. This model refers to a unilateral adaptation of the migrant to the culture of the host society, which ultimately leads to the abandonment of its origins.⁸

The second model refers to multiculturalism and is characteristic of countries such as the UK and the Netherlands. Unlike the first model, this is a twofold process in which the migrant adapts to the host society and the host society adapts to the migrant allowing them to preserve their cultural heritage.⁹

Recently another pattern on how to deal with migration has emerged, it is called mainstreaming integration policy. The concept of mainstreaming was developed in relation to gender studies where it became a powerful tool in the study of good governance. It gained a formal component in 1997, United Nations proposing it as a 4 steps program to reach gender equality (design, implementation, monitoring and evaluation of programmes and policies in all main fields).¹⁰

This model acts through a series of mainstream adapting services to address the needs of both the local communities, as well as of those of migrants. Mainstreaming acts through social programming and policies, targeting both the population with a migration background, as well as the general population.¹¹ Four states in Europe have already resorted to this model: the UK, France, Denmark and Germany; for some others, like: Spain and Poland, mainstreaming was an accident, but with some major achievements as well.

In the last decade the scientific literature on integrating migrants has advanced 2 new approaches. The first approach was formally drafted by Vertovec¹² and it is centered around superdiversity. The main challenge here consists of how to address very diverse cities or communities in terms of policy formation and sustainability, given the fact the major national recipes have proved inefficient. Such a rhetoric goes beyond the ethnic, religious or gender components of a nation, into a broader perspective built around multiculturalism.

The second approach is structured around the concept of interculturalism. As opposed to the assimilationist nature of multiculturalism, this second perspective encompasses both majority and minority cultures.¹³ This model is interested in creating new forms of public

⁷ <http://data2.unhcr.org/en/situations/mediterranean> and <http://migration.iom.int/europe/> accessed on 15.07.2017

⁸ Bertossi, C. "National Models of Integration in Europe: A Comparative and Critical Analysis, Center for Migrations and Citizenship", French Institute for International Relations (Ifri), Paris (2011)

⁹ Regout, S. "The integration of immigrant communities in France, the United Kingdom and the Netherlands: National models in a European context", LES Working Paper, London (2011),

¹⁰ P.W.A. Scholten, I. van Breugel, *Mainstreaming Integration Governance. New Trends in Migrant Integration Policies in Europe*, Palgrave Macmillan, 2017, 6, available at: DOI 10.1007/978-3-319-59277-0_1.

¹¹ Elizabeth Collett, Milica Petrovic, *The Future of Immigrant Integration in Europe. Mainstreaming Approaches for Inclusion*, Brussels, Migration Policy Institute, March 2014, 3.

¹² Steven Vertovec, "Super-diversity and its implications", *Ethnic and Racial Studies*, Vol. 30(6), 2007, 1024-1054, available at: <http://dx.doi.org/10.1080/01419870701599465>

¹³ Gerard Bouchard, "What is Interculturalism", *McGill Law Journal*, Vol. 56(2), 2011, passim 437-442.

culture, that would be able to attract a full spectrum of populations and citizens, in the sense of forging a commitment. Interculturalism pleads for interaction, respect and some sort of collective responsibility and action.¹⁴

In addition to the integration models, several EU level instruments have been developed to provide support for the integration of migrants in the Member States. These include the European Integration Forum¹⁵, the Integration Manual¹⁶, the European Integration Web Site¹⁷ and the European Integration Fund.¹⁸ The Common Basic Principles for Integration Policies¹⁹, for which the Council reaffirmed its commitment in 2014, also have great potential in guiding national policies in this area, serving as a basis in shaping national integration strategies.

However, despite the existence of these EU instruments, both their scope and their impact are limited. In addition, EU instruments in the field of integration policy come from, or are often, adapted from other policy areas, not being designed to address the specific issue. As a result, the issue of integration should be rethought in EU migration policy. Although the EU has adopted legal instruments to combat illegal migration, border control and asylum, its actions on migrant integration are very limited. Thus, responsibility for migrant integration lies with national and regional authorities, while the EU is slowly trying to "pursue active integration policies that promote social cohesion and economic dynamism".²⁰

SOCIO ECONOMIC BARRIERS AND NATIONALISM

The difficult and unpredictable economic environment, with its repercussions on people's everyday lives, affects how migrants are perceived by the rest of society. Usually, migrant workers have low social and legal status in host countries, they will be an ethnically identified group, mostly with a lower economic class.

Social inequalities are present in every society, which means that the freedom to lead flourishing lives and to enjoy good jobs and health is unevenly distributed among different population groups and migrants frequently find themselves among those most affected by these imbalances.

Nationalism is born as a result of the persistence of barriers to socio-economic mobility. In order for the integration project to become feasible, the masses of migrants must be convinced to want and accept the idea that the host state could meet their demands for socio-economic mobility. This case may correspond to the "Habsburg classical form of nationalism" in Gellner's typology, "An ethnic minority fails to share high-level culture because it possesses certain cultural features resistant to uncertainty such as language, physical traits, religion or customs". In this case, given the resistance to the state of uncertainty by preserving their own language (Arabic), habits and religion (Islam), assimilation cannot take place.

¹⁴ Phil Wood, *Intercultural Cities. Towards a Model for Intercultural Integration*, Council of Europe, Strassburg, 2009, 11-19, available at: <https://rm.coe.int/16802ff5ef>

¹⁵ <http://www.eesc.europa.eu/en/tags/european-integration-forum> accessed on 20.08.2017

¹⁶ http://www.olai.public.lu/en/publications/brochures-depliants/04-manuel3-fr/handbook_3_en.pdf accessed on 20.08.2017

¹⁷ <https://ec.europa.eu/migrant-integration/> accessed on 20.08.2017

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¹⁹ http://www.eesc.europa.eu/resources/docs/common-basic-principles_en.pdf accessed on 20.08.2017

²⁰ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf accessed on 25.08.2017

If the minority possesses and assumes a culture different from the dominant one, it ends in inferior socio-economic classes and individuals consider their ethnic status as a minority to adversely affect their life perspectives.

Because the resistance to uncertainty prevents assimilation, the desire for socio-economic progress in the host society determines the ethnic minority to seek “its own state”, especially since the minority cannot change the situation from within because it has no political power.

Moreover, economic integration entails turning migrants into a workforce for Europe's economy. Once created, the proletariat will face obstacles to socio-economic mobility that are resistant to entropy. They will constantly occupy the lowest degrees of occupational ladder. The result will be transposed into an inevitable sense of discrimination because they will have lower wages, will not be eligible to fill certain jobs, and will often be employed in lower jobs.

Access to labor markets is usually delayed due to the necessary procedures for obtaining asylum. Refugees need time to adapt, learn the language of the host country, and go through a process of assessing and recognizing the skills and homework's acquired in their country of origin.

According to studies published by the OECD, more than four out of ten refugees (43%) only have primary education compared to about 23% for EU citizens, refugees who have come in recent years have a lower education than those who came before, and the results of the PISA²¹ test clearly demonstrate that children with a migrant background have lower average scores than native children in all three areas analyzed in the OECD Global Study.²² The difference between the levels of education across generations indicates not only that migrants but also children of immigrants will face a certain disadvantage when they enter the labor market.

None, though, are mutually exclusive: disadvantage and the failure to integrate in one dimension are likely to have multiple repercussions. Concentrations of migrants in geographically disadvantaged areas, for example, may affect effective integration in the education system and, later, the labor market.²³

CONCLUSIONS

In order to find a job or start a new business, migrants and refugees have to cope with many barriers that at various levels affect the effectiveness of integration strategies. Given the current conditions, especially ease of communication, it is very easy to reach the spread of the nationalist idea as well as to politicizing the masses along ethnic lines. Existing mosques and professional organizations can play a role as incubators, while helping to promote nationalism among the masses. Also, due to the fact that, at least for a period of time, the political representation will be lacking, there will be a shortfall in the possibility of changing the situation from their perspective.

²¹Three areas were analyzed in the test: reading, mathematics and IT problem solving

²² OECD reports 2015 and 2017 available at <http://www.oecd.org/> accessed on 27.08.2017

²³ (OECD/European Union (2015), *Indicators of Immigrant Integration 2015: Settling In*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264234024-en>) accessed on 27.08.2017

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DOES RECENT IMMIGRATION CAUSE MORE TERRORISM IN EUROPE? AN ANALYSES OF CAUSES, LINKS AND CONSEQUENCES

Claudia Anamaria IOV¹

Anca-Gabriela MICAS²

ABSTRACT: *OVER THE LAST FEW YEARS, THE EUROPEAN UNION HAS BEEN DEALING WITH AN INCREASING NUMBER OF PROBLEMS REGARDING THE WAVES OF IMMIGRANTS ENTERING THE EUROPEAN AREA, ISSUES RELATED TO BORDER SECURITY AND, ESPECIALLY, CONFLICTS CONCERNING THE ACCEPTANCE OF IMMIGRANTS WITHIN THE NEW TERRITORIES, AS THIS IS NOT ONLY AN ISSUE ON PROVIDING SHELTER, BUT A WHOLE PROCESS OF INTEGRATION, FROM ALL POINTS OF VIEW (ECONOMIC, SOCIAL, POLITICAL, CULTURAL, ETC.), WHICH TAKES TIME, RESOURCES, THE INSTITUTIONS' AND CITIZENS' DESIRE TO ACCEPT THEM IN THEIR OWN SOCIAL SYSTEM. AS WE COULD OBSERVE SO FAR, CERTAIN STATES WERE MORE OPEN TOWARDS IMMIGRANTS AND, TOWARDS THEIR INTEGRATION. ONE OF THE MATTERS WE WANT TO UNDERLINE IN THIS PAPER IS THE ONE RELATED TO THE POSSIBILITY OF CERTAIN CONNECTIONS EXISTING BETWEEN THE TERRORIST ATTACKS THAT HAVE BEEN HAPPENING MORE AND MORE OFTEN LATELY, AND THE WAVES OF IMMIGRANTS COMING TO EUROPE, WHICH CAN RAISE AN ALARM REGARDING THE SECURITY OF BORDERS AND CITIZENS.*

THESE ARE THE MAIN IDEAS THAT WE WOULD LIKE TO DEVELOP BY OUTLINING THE CAUSES, LINKS, AND THE CONSEQUENCES THAT IMMIGRATION AND TERRORISM CAN HAVE ON EUROPEAN SPACE, ESPECIALLY ON THE SECURITY OF STATES, CITIZENS AND, IMPLICITLY, ON THE ENTIRE SOCIETY.

KEY WORDS: IMMIGRATION, EUROPEAN UNION, TERRORISM, SECURITY.

INTRODUCTION

Immigration, refugee crisis and terrorist attacks in today's Europe represents a problem of today's reality, an issue that is increasingly making its presence felt, with great implications upon the societal, political, socio-economic and individual security.

In the recent years, Europe has become a real refuge for people coming from the Middle East and North Africa, seeking a better life. Unfortunately, the "clash of civilizations"

¹ Claudia Anamaria Iov, PhD, 3rd Grade Scientific Researcher at Babeş-Bolyai University, Faculty of History and Philosophy, Department of International Studies and Contemporary History, e-mail: claudia.iov@ubbcluj.ro.

² MA, Babeş-Bolyai University, Romania, anca_micas@yahoo.com.

as described by Huntington³, also reveals a clash between social security and the fundamental human rights, the significance of each of these terms being different and exact at the same time⁴.

In other words, throughout history, the Mediterranean has been a natural border between the Muslim World and Europe. Gradually, this border has faded away, the Muslims building and strengthening their own enclaves across Europe through a continuous immigration process⁵.

With regard to the refugee crisis, we can state that lately, this is an increasingly active phenomenon, which can raise important questions. Certain states have preferred a rough policy towards refugees, while others, like Germany, were more permissive and even encouraged immigrants to come in large numbers. In this respect, the Chancellor of Germany, since 2005, Angela Merkel, has and still plays an important role with her controversial “open-door”⁶ refugee and immigrants policy.

Thus, this continuous encouragement towards the Arab wave of immigrants carried out in the last few months by Angela Merkel and the former President of France, François Hollande, has perhaps been launched much too easily, without taking into account the possibility of terrorist organization members infiltrating the refugees, especially since Syria is the main migrant-generating country. The issue we want to emphasize through this analysis refers to the threat and, subsequently, to the risk we can be exposed, along with the massive waves of immigrants coming to Europe. These can become perfect pretexts for terrorist organization adepts to enter this area.

IMMIGRATION – A RISK FACTOR UPON THE SECURITY OF THE EUROPEAN AREA

When analyzing a phenomenon such as the migratory one, it is absolutely necessary to point out that it is closely related to the evolution of humanity, to the international political and military context, to the actions of the great powers and to the dynamics of the people and society.

As a result, we determine that this refugee crisis is not an exclusive effect of the war in Syria, but also a sad reflection of an unstable world, of poverty and unequal access to knowledge, of the power void and all types of formations: political, military, paramilitary, etc. This is a current phenomenon that has strong security implications and consequences that are barely predictable and almost impossible to quantify.

Another detail to be considered for analysis refers to the religious side, which cannot be ignored when talking about migration, security and acts of terrorism. Hence, because of their own religious and cultural customs, certain categories of immigrants refuse to integrate in the new societies or the so-called host states, thus facing institutional, political, economic issues, which can represent a true crisis situation with impact on the political and economic stability.

³ American political scientist, who gained his notoriety after publishing the volume “Clash of civilizations and the remaking of world order”.

⁴ Mihai Alexandrescu, *The refugee crisis in the European Union: between the fundamental human rights and the efforts towards securitization*, (Cluj-Napoca: CA Publishing, 2016), 5.

⁵ Laurențiu Nedianu, „Terorismul și migrația ilegală” [Terrorism and illegal migration], in *Geopolitica*, No. 62, (4/2015), available at http://www.intellnews.ro/analiza-terorismul-si-migratia-ilegala/#_ftn5, accessed on 10.09.2017.

⁶ Angela Merkel presents new plan to boost asylum deportations as she fights back against challenger, Justin Huggler, *The Telegraph*, 09.09.2017, <http://www.telegraph.co.uk/news/2017/02/09/angela-merkel-presents-new-plan-boost-asylum-deportations-fights/> accessed on 16.09.2017.

The worst fears of the population have been and still are related to the security risks imposed by the large-scale migration, with a reference not only to gun and/or drug traffic, but especially to the threat represented by terrorism, the series of attacks of recent years strongly fueling xenophobic feelings.

From a national security point of view, the migration phenomenon can lead to the exploitation of illegal migration channels and the infiltration on European territory of terrorist group members and adepts of certain extremist terrorist ideologies who promote subversive, extremist ideas or trends, instigating to the violation of the legal framework. Violence may arise against the (local or national) authorities and between migrants in transit and destination-state housing centers; the violent acts at the Greek-Macedonian border are exemplary, being recorded when the decision to close the Macedonian border was taken in order to stop the flow of migration on the Balkan route⁷.

Remembering recent events, Europe has experienced the most intense wave of terrorist attacks in recent years. Since 2015, Europe has experienced more than 15 security threats, all headlines of newspapers, starting with Charlie Hebdo attacks, January 7th, 2015, (12 people killed on the spot), continuing with Paris attacks, November, 13th, 2015, (130 victims and other hundreds injured, the most deadly assault on French soil since World War II), Brussels bombings, March, 22nd, 2016 (32 people killed and more than 300 wounded), Bastille Day massacre in Nice, July, 14th, 2016, (84 people were killed and hundreds of others injured), different attacks in Germany in July, 2016; Normandy terror, in a church during mass in Saint-Etienne-du-Rouvray, a suburb of Rouen in northern France, on July, 26th, 2016; Berlin Christmas market attack, in Berlin, December, 19th, 2016 (12 people were killed and injured more than 60); Louvre knife attack, in Paris, February, 3rd, 2017; the terrorist attack on Westminster Bridge, London, March, 22nd, 2017 (two men and two women were killed and many others injured); the Stockholm attack by a failed asylum seeker from Uzbekistan, April, 7th, 2017, (four people were killed and at least fifteen were injured); Paris shooting on the Champs Elysees, April, 20th, 2017, (one policeman killed and two injured); The Manchester terror attack at an Ariana Grande concert at Manchester Arena on May, 22nd, 2017, (22 people were killed and 59 injured); a second London bridge attack, on June, 3rd, 2017; Finsbury Park terror attack, in London, on June, 19th, 2017 (a person was killed and some injured); the terrorist attack in Barcelona, on Las Ramblas rue, on August, 17th, 2017 (13 people were killed and more than 100 injured). These high-profile attacks in Western Europe have triggered the terror the Muslim perpetrators intended, produced massive media coverage, unleashed a backlash against Islam and propelled governments to devote huge resources to prevent future random assaults on their citizens. Even so, terrorism in Western Europe remains less frequent compared to the number of religious and terror attacks from the '70s, '80s or '90s.

According to the University of Maryland's Global Terrorism Database, Western Europe experienced in 2015 and 2016, no more than 604 terror attacks that killed 383 people. By contrast, in 1979-1980, the region experienced 1,615 terrorist incidents that killed at least 719 people⁸.

Terrorism has continued to evolve as a strategy in the contemporary era as well. This is best seen in the technological development. Terrorists have adopted new types of explosives and portable automated weapon models not only as better and louder means to

⁷ Georgiana Chirilă, „Migrația ilegală sau cum se importă riscurile de securitate”, [„Illegal migration or import of security risks”], in *Intelligence în serviciul tău*, 2016, available at: <http://intelligence.sri.ro/migratia-ilegala-sau-cum-se-importa-riscurile-de-securitate/>, accessed on 08.09.2017.

⁸ The University of Maryland's Global Terrorism Database, <https://www.start.umd.edu/gtd/> accessed on 16.09.2017.

draw attention, but also as “force multipliers” which allow for few perpetrators to cause a larger number of victims. Also, the media technology innovations have provided new and better means to deliver programs both orally and practically.⁹

A connection between each of the problems listed and the waves of immigrants can be made from obvious reasons, both the reports of responsible institutions and the reactions expressed by decision-makers being essential indicators in this respect, especially with regard to the link between migration and terrorist risks.

TERRORISM IN EUROPE AND THE IMMIGRANT WAVE – CAUSES, DECISIONS, POLITICS AND LINKS

By its scale and forms of manifestation, terrorism has acquired a complex, global character. Thus, terrorism has become one of the main threats to the European and EU Member States’ security.

In 2008, the EU Member States have adopted a Pact on Immigration and Asylum. The European Pact is a political document emphasizing security challenges and not only, triggered by the migration and asylum phenomenon. Having this Pact, Europe can take action in a concerted manner.¹⁰

The *Pact on Immigration and Asylum* sets out the EU Member States’ commitments, namely:

- a better organization or legal immigration;
- a more efficient fight against clandestine immigration;
- strengthening efficacy;
- strengthening controls at the EU’s external borders; a direct relation of EU with the source countries of immigration.¹¹

In turn, through individual efforts, the Member States contribute to ensuring the national and European security. In this respect, both at the Union and national level, actions are taken to implement the following measures: the fight against internal and international terrorism; the control of legal and illegal migration; active involvement in conflict and crises solving on the European continent and around the world.

Also, *the European Agenda on Security*, published in April 2015, identifies terrorism as one of the fundamental threats to European security:

*“Dialogues should be extended to include priorities such as cooperation in fight against transnational organised crime and terrorism, smuggling of migrants and trafficking in human beings”*¹² [...] *“Common high standards of border management, in full respect of the rule of law and of fundamental rights, are essential to preventing cross-border crime and terrorism”*¹³.

According to a short passage from the Qur’an, (4:100), emigrating in Allah’s name, more precisely, going and spreading Islam in another country is an extremely meritorious act.

⁹ Randall D. Law, *Istoria terorismului de la asirieni la jihadiști* [The history of terrorism from the Assyrians to the Jihadists], translated by Sorin Șerb, Bucharest: Corint Publishing House, 2017, 557.

¹⁰ Petre Duțu, Cristina Bogzeanu, *Provocări actuale pentru securitate europeană* [Actual challenges for the European security], (Bucharest: The National Defense University „Carol I” Publishing House, 2010), 58.

¹¹ Petre Duțu, Cristina Bogzeanu, *Provocări actuale ...* [Actual challenges ...], 58.

¹² Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions. The European Agenda on Security, Strasbourg, 28.4.2015, COM(2015) 185 final, p.4,

<http://www.europarl.europa.eu/cmsdata/125863/EU%20agenda%20on%20security.pdf>, accessed on 14.09.2017.

¹³ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions. The European Agenda on Security, Strasbourg, 28.4.2015, COM(2015) 185 final, p.8,

<http://www.europarl.europa.eu/cmsdata/125863/EU%20agenda%20on%20security.pdf>, accessed on 14.09.2017.

As a result, from this perspective, it can be stated that the massive Muslim migration flow towards Europe could well hide the Hijrah migration Islamic doctrine – a masked form of jihadism, in the form of a refugee crisis. To be politically correct, not all the refugees are terrorist and not all the terrorist are immigrants or refugees.

For example, the attack in Paris on November 13th 2015 may be categorized as related to the waves of immigrants. The attack took place during the football game between France and Germany, held on the Stade de France stadium in northern Paris: the attacker – a kamikaze, blew himself up near the sports arena, where former French President, François Hollande, was also present. Within a short period of time, two other men blew themselves up nearby. The French state declared the state of emergency and reinstated border controls (although the President had originally declared that all borders were completely closed)¹⁴.

Shortly after, the French investigators identified four out of seven kamikaze attackers, French citizens, most of whom had been in Syria for various periods of time.

This terrorist attack was a big wake-up call, condemned by the entire international community, which also made NATO reaffirm its position and determination in the fight against terrorism.

In this case, one of the kamikaze terrorists who blew himself up in the midst of the crowd in Paris during the attack of November 2015, was originally from Syria and entered France through Greece, along with the wave of immigrants, as stated the French authorities.

A provisional track record following the almost simultaneous terrorist attacks in Paris, show that 128 people died and 300 were injured. ISIS claimed the attack, threatening that it was just the beginning.¹⁵

The effective management of migration and asylum in Europe is a priority objective for the current European Executive (2014-2019). When taking office as the European Commission President, Jean-Claude Juncker stated that migration and the refugee problem are two of the 10 priorities of the European Commission's political programme.¹⁶

The migration of a large number of people from war-affected areas to other non-conflict zones has multiple consequences, for example: destabilizing the economy of destination countries; facilitating the actions of cross-border organized crime and terrorism; generating hatred and xenophobic and racial violence.¹⁷

In close cooperation with the European authorities, the new National Defense Strategy of Romania, published in May 2015, also identifies terrorism, radicalization and violent extremism as priority threats to national security.¹⁸ In this context, as well as in that of the terrorist attacks in Madrid, London, Paris, Copenhagen and Brussels between 2004 and 2015, the European Parliament adopted in February 2015 the European Parliament Resolution on antiterrorism measures.

¹⁴ "Multiple terrorist attacks in Paris: At least 140 deaths. France declares the state of emergency and closes the borders." *Gândul newspaper*, November 13th 201.

¹⁵ One of the terrorists in Paris, the new wave of immigrants, <https://www.dcnews.ro/unul-dintre-terori-tii-din-paris-din-noul-val-de-imigran-i-489703.html>, accessed on 09.09.2017.

¹⁶ EU policies on migration and asylum, <https://www.mae.ro/node/35902>, accessed on: 14.09.2017.

¹⁷ Alexandra Sarcinschi, *Migrație și Securitate [Migration and Security]*, Bucharest: The National Defense University „Carol I” Publishing House, 2008, 5 available at http://cssas.unap.ro/ro/pdf_studii/migratie_si_securitate.pdf, accessed on 15.09.2017.

¹⁸ Presidency of Romania, *Strategia națională de apărare a țării pentru perioada 2015-2019 [The National Defense Strategy of the Country for 2015-2019]*, Bucharest, 2015, available at: http://www.presidency.ro/files/userfiles/Strategia_Nationala_de_Aparare_a_Tarii_1.pdf, accessed on 10.09.2017.

CONCLUSION

Aspiring for safety is a universal human attribute. However, for both nations and individuals, the definition of security and the strategies to achieve it vary greatly when it comes to food, water, medical care or freedom – not to mention other fundamental human rights: the freedom of speech and faith or putting an end to arming. But there are too many places where the ongoing conflicts block the way to security, which is why the efforts to achieve must start with solving them.¹⁹

In the era of globalization, it is more obvious than ever that the sources of insecurity: extremism, poverty (often associated with human rights violation and incompetent governance), civil tensions, wars, are endless threats.²⁰

The export of Islamic radicalism from areas on the “axis of evil” to those with latent inter-confessional conflicts, corroborated with choosing Europe as an area of refuge and rehabilitation for the extremist-terrorist groups, maintains the actuality of the terrorist threats risk, the probability of their materialization being increased by the existence of powerful Arab communities in almost all the countries in the area, communities that also include supporters or members of the terrorist organizations like Kongra Gel, Hamas, Hezbollah, the Muslim Brotherhood, etc.²¹

Following this research and assessing the latest events that took place in Europe related to the terrorist attacks and their subsequent disclosures, a few disturbing questions may arise for the analysts, decision making politicians, security specialists and researchers: Will the 21st century be a time of religious confrontation? Will the authorities’ and political leaders’ attitude change towards accepting immigrants in their own social systems? To anticipate, we can only say that the evolution of the future national, as well as European and global events, will be conclusive.

¹⁹ Mohamed ElBaradei, *Epoca dezamăgirii. Diplomatie nucleară în vremuri de cumpănă* [The era of disappointment. Nuclear diplomacy during dark times], translated by Sorin Șerb, (Bucharest: RAO Publishing House, 2012), 357.

²⁰ Mohamed ElBaradei, *Epoca dezamăgirii...[The era of disappointment...]*, 358.

²¹ Ene, Roland-Dorian, Threats against peace and security in the contemporary age, in *Romanian Association of Humanitare Law – Prahova's Brach* available at: <http://www.arduph.ro/domenii/protectie-persoane-si-bunuri/in-caz-de-conflict-armat/amenintari-la-adresa-pacii-si-securitatii-in-epoca-contemporana/>, accessed on: 18.08.2017.

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16. The University of Maryland's Global Terrorism Database, <https://www.start.umd.edu/gtd/>.

WHAT PROSPECTS OF EU MEMBERSHIP FOR THE WESTERN BALKAN COUNTRIES IN THE MIDST OF THE CURRENT REFUGEE/MIGRATION CRISIS?

Edina Lilla MÉSZÁROS¹

ABSTRACT:

CONDITIONALITY IS A COMMONLY USED TOOL BY THE EU ON TARGET COUNTRIES IN ORDER TO PURSUE THE PROMOTION OF HUMAN RIGHTS, DEMOCRATIZATION, MARKET ECONOMY AND GOOD GOVERNANCE. THE CURRENT ARTICLE IS AIMED AT ANALYZING THE EU'S CONDITIONALITY PRINCIPLE TOWARDS THE WESTERN BALKANS COUNTRIES FROM AN UNUSUAL ANGLE, BY ASSESSING SERBIA'S AND THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA'S LEVEL OF COMMITMENT IN THE JOINT MANAGEMENT OF THE CURRENT MIGRATION CRISIS, PRINCIPLE WHICH IS IMPORTANT IN THE EVALUATION OF THEIR PERFORMANCE CONCERNING THE PROSPECT OF A FUTURE MEMBERSHIP. THE AUTHOR WISHES TO EXPOUND THREE PATTERNS OF EU CONDITIONALITY, I.E. THE POSITIVE-, THE NEGATIVE AND FINALLY THE COMPLIANCE CONDITIONALITY, BY UNDERTAKING A COMPARATIVE ANALYSIS OF THE EUROPEAN COMMISSION'S PROGRESS REPORTS ON SERBIA AND MACEDONIA IN 2015, RESPECTIVELY 2016, EXAMINING THEIR PERFORMANCE DURING THE MIGRATION IMPASSE. BRIEFLY SHALL BE DISCLOSED ALSO THE ASSISTANCE GIVEN BY THE EU TO THESE COUNTRIES, WONDERING WHETHER EXISTED A COHERENT RESPONSE ON THE EU LEVEL OR A FRAGMENTED APPROACH ON THE LEVEL OF MEMBER STATES. THE RATIONAL CHOICE PARADIGM HAS BEEN CHOSEN AS THE THEORETICAL PILLAR OF THE STUDY, AS IT ARGUES THAT POLITICAL LEADERS ARE RATIONAL POLICYMAKERS, WHO BASED ON A THOROUGH COST-BENEFIT ANALYSIS WILL TRY TO MAKE THE BEST FOREIGN POLICY DECISIONS POSSIBLE. THIS IMPLEMENTED IN THE REALM OF THE WESTERN BALKANS STATES STRESSES THAT IT IS IN THEIR INTEREST TO COMPLY WITH THE EU'S CONDITIONALITY PRINCIPLES AND TO BECOME MEMBERS, THAN TO KEEP THEIR CURRENT STATUS OR IN A WORST SCENARIO TO REMAIN ISOLATED.

KEY WORDS: RATIONAL ACTOR MODEL, EU MEMBERSHIP, BALKAN BAROMETER, ASYLUM, VISA POLICY, IRREGULAR MIGRATION

INTRODUCTION

When it comes to the EU's relationship with third countries, whether we talk about the Neighbourhood Policy, Mobility Partnerships or negotiation with candidate or potential candidate countries, the *principle of conditionality* occupies a pivotal role. In case of the Western Balkan countries besides the well-known Copenhagen criteria, the conditions set by the Stabilization and Association Process also have to be fulfilled, namely these countries have to pursue regional cooperation, have to create the necessary conditions for the return of

¹ PhD. Assistant, Faculty of History, International Relations, Political Science and Communication Sciences, University of Oradea, Romania, edina_lilla@yahoo.com.

the refugees and must fully cooperate with the International Criminal Tribunal for the former Yugoslavia.² Moreover, the closure of visa facilitation and readmission agreements with the countries from the Western Balkans are also under the auspices of a so called *negative conditionality* and *performance based* approach. This means that any future cooperation, association or equivalent agreement what the EU concludes with third countries, includes a clause on joint management of migration flows and mandatory readmission in case of illegal immigration. Thus, the Union is conditioning the development of relations with third countries based on their willingness to cooperate in the joint management of migration flows. In case of an unjustified lack of cooperation in combating illegal immigration, the European Council may propose a review of relations with these countries.³ Therefore, it can be concluded that how the Western Balkan countries manage potential irregular migrant waves and refugee crisis also holds much weight in the evaluation of a countries' progress concerning accession to the EU. In the light of these observations, the present article aims at analyzing the EU's conditionality principle towards the Western Balkan countries through the prism of *performance*, shown during the current refugee crisis, asking whether the way how these countries (especially Serbia and Macedonia) have addressed the refugee crisis and cooperated with the competent EU authorities brings them closer to their long desired EU membership, or pushes them back behind the walls of isolation. Furthermore, not just the performance of the Western Balkan countries shall be put under magnifying glass, but also briefly that of the EU, wondering how it handled this crisis internally and how it interacted with the countries involved, wondering whether there was a coherent response from the supranational level or a fragmented approach from the level of Member States. As methodology, the research targets to identify and apply various conditionality patterns used by the EU in the Western Balkans, emphasizing mostly on *positive* and *negative* conditionality and *compliance* pattern. The EU has developed various conditionality clauses in order to encourage state compliance. The scheme is very simple: reinforcement by reward opposed to reinforcement by punishment.⁴ By *negative conditionality* we understand the suspension or completion of benefits in case of non-compliance by a target country, while *positive conditionality* means the distribution of benefits as a reward for compliance, meaning the performance of a recommended behaviour. In case of the Western Balkans countries these benefits may include: EU membership, trade preferences or the possibility to participate in various community programmes and visa facilitation agreements.⁵

The inquiry is based on the hypothesis promoted by the *rational choice paradigm/rational actor model*, stressing that based on an in-depth *cost-benefit analysis*, on the long run it is more beneficial for the Western Balkan countries to become fully fledged EU members, than to keep their current status, thus they will try to comply with the community's conditionality principles

² Judy Batt, and Jelena Obradovic-Wochnik, "War crime, conditionality and EU integration in the Western Balkans," Chaillot Paper 116 (2009): 9, accessed May 29, 2017, <http://www.iss.europa.eu/uploads/media/cp116.pdf>.

³ The Council of the European Union, "Seville European Council 21-22 June 2002 Presidency Conclusions," Brussels, October 24 (29.10) (OR. fr), 11-12, accessed May 23, 2017, [13463/02www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/72638.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/72638.pdf).

⁴ Fabienne Zwagemakers, "The EU's Conditionality Policy: A New Strategy to Achieve Compliance," *IAI Working Papers* 12 (January 2012): 3, accessed May 29, 2017, <http://pubblicazioni.iai.it/pdf/DocIAI/iaiw1203.pdf>

⁵ Liu Zuokui, "EU's Conditionality and the Western Balkans' Accession Roads," *European Perspectives-Journal on European Perspectives of the Western Balkans* 2/1 (2010): 83-84, accessed May 20, 2017, <http://www.cep.si/dokumenti/81-100.pdf>.

RATIONAL CHOICE THEORY/RATIONAL ACTOR MODEL AND THE FOREIGN POLICY DIRECTION OF THE WESTERN BALKANS COUNTRIES TOWARDS THE EU

As one of our main hypothesis we have argued that the foreign policy direction of the Western Balkans policymakers enrolls within the *rational choice paradigm/rational actor model*, assuming that based on the available information political leaders will employ their rational and will take the best decisions possible. This means that all political leaders from the Western Balkans will try to comply with the EU's conditionality principles and to continue the implementation of the required reforms, in hope of a future membership. However, we must emphasize that, although the prospect of a future membership is very enticing and normally would motivate them to carry on with the desired changes, any deadlock, or in our case the incapability of the EU to manage the migration/refugee crisis, on the long run could lead to a 180 degrees turnaround, the fairly benevolent political and social landscape turning their back on the EU. Furthermore, in our opinion here it may be observed the existence of a double conditionality:

Firstly, we may speak about the EU conditionality towards the Western Balkans countries, which have to comply with certain political, economic, judicial etc. criteria in order gain acceptance to the European Community. The willingness of these countries to cooperate with the EU in the management of potential migration flows also holds much weight in the evaluation of a countries' progress concerning accession to the EU.

Secondly, we could mention the conditionality, that usually is being overlooked in the vast majority of the existent scholarly literature on the topic, namely that of the Western Balkans countries towards the EU, as the proper management of the current (or any) migration/refugee stalemate could be the condition to continue the implementation of the desired reforms by the EU in the Western Balkans countries. Additionally, we contend that due to the lack of overall vision, coordination and policy to manage the current refugee crisis, as many migrants/refugees were (and are still) stuck⁶ in some of the Western Balkans countries, the European Union was exporting instability and insecurity to the Western Balkans countries and not vice versa. As a consequence of its inability to oversee the prevailing migration emergency and to offer viable solutions, there's a chance that also the EU's credibility and attractiveness had been reduced in the eyes of the Western Balkans countries, presumably lessening its transformative leverage in the region. However, despite the EU's visible flaws, the lack of other alternatives, could still keep these countries committed to advance with the much coveted reform processes.

As one our axioms, we contend that the success of the integration process in the Western Balkans region is strictly linked to the commitment of the political elite and of the citizens to continue the implementation of the required reforms. The deconstruction of the *rational choice theory/rational actor model* will enable us to understand the motives behind this commitment of the Western Balkans leaders towards the EU. Derived from the realist theory of Morgenthau and from the neo-classical economic theory, the *rational choice paradigm* first entered in the political consciousness in the 1950s', 60s', affirming that not the perceptions and personality of the leaders are what matter in foreign policy decision-making but their rational. They will try to choose the best alternatives of the options presented to them; the options must imply minimum costs and maximum benefits in order to follow the national interest. Of course, that for the leaders choosing of the best option depends of the

⁶ The Guardian, "Refugees stuck in Serbia begin marching towards Hungarian border," October 4, accessed May 29, 2017, <https://www.theguardian.com/world/2016/oct/04/serbia-refugees-hungarian-border-macedonia-bulgaria>.

quantity and reliability of information.⁷ Furthermore, this paradigm emphasizes on the reconciliation of diverging interests and preferences of different national actors for the sake of the collective good, identifying a collective choice mechanism which maximizes a nation's social and economic welfare function.⁸ Theodore Sorenson, one of J. F. Kennedy's principle advisors considered that according to the *rational choice model*, foreign policy decision-making is a process made up of eight consecutive steps, namely:⁹

- agreeing on the facts;
- agreeing on the overall policy objective;
- precisely defining the problems;
- inspecting all possible solutions;
- listing the consequences that originating from each solution;
- recommending one option;
- communicating the option selected;
- providing for its execution.

Thus, in overall we might acknowledge that the *rational actor model* (promoted within the *rational choice paradigm*) is a model in which decision makers set goals, evaluate their relative importance, calculate the costs and benefits of each possible course of action, then choose the one with the highest benefits and lowest costs employing the logic of *consequentialism* to assess the results that can be expected from the decision taken.¹⁰

However, as highlighted before, the success of the integration process in the Western Balkans region doesn't depend only on the rational and foreign policy direction chosen by the political elite, but also on the willingness and the commitment of the citizens to carry on the implementation of the required reforms.

In the next part we shall carry out a succinct quantitative analysis in order to reveal the perceptions of the citizens from the Western Balkans countries about the EU, this information being essential in assessing the citizens' willingness to support the implementation of the required reforms. The prevalence of a negative demeanour could jeopardise the prospect of a future EU membership, as in the last minute after the successful conclusion of negotiations with the national policy-makers, at the final referendum the citizens could express an unfavourable vote, thus terminating the entire process.

AN ASSESSMENT OF THE WESTERN BALKANS COUNTRIES' PERCEPTIONS ABOUT THE EU

The 2015 and 2016 editions of the Balkan Barometer Public Opinion Survey offer us a genuine picture of how citizens from the Western Balkan countries truly feel about the European Union. Their affinity towards the EU is measured through the respondent's perception of the EU membership as being a good or a bad thing. According to the 2015 Balkan Barometer only 40 percent of the interviewed citizens from the Western Balkans thought that the EU membership was a good a thing, while 37 percent said that it was neither good nor bad. Serbia is the tail-ender, with only 24 percent of its respondents expressing a favourable view towards the EU, the vast majority, 44 percent being undecided. The frontrunners of EU integration were Kosovo with 89 and Albania with 84 percent of positive votes. Macedonia ranked the third with 41 percent of the interviewees regarding EU

⁷Charles Kegley and Samuel L. Blanton, *World Politics.Trend and Transformation* (Wadsworth: Cengage Learning, 2011), 196.

⁸ George Thomas Kurian ed. in chief, *The Encyclopedia of Political Science* (Washington: CQ Press, 2011), 1424.

⁹ Kegley and Blanton, *World Politics*, 198.

¹⁰ Andrew Heywood, *Global Politics* (Houndmills: Palgrave Macmillan, 2011), 129.

membership as a positive thing. However, the overall perception of the EU within the Western Balkan countries is not totally positive, at least is not totally negative either, as only 20 percent of those interviewed expressed their dissatisfaction with the EU.¹¹

These statistics denote a clear loss of credibility and of transformative leverage of the EU in the region, however in our opinion with a more comprehensive approach to the current migration stalemate and more assistance provided for these countries (by which we mean more centred reforms, economic, social, political assistance) many from the group of the indecisive could be won over to support accession to the European Community. Furthermore, when asked about the possible date of their accession to the EU, the vast majority of the respondents from the Western Balkan countries were more cautious about their prepositions. 51 percent of the Albanians, 37 percent of the Kosovans, 33 percent of the Montenegrins, 24 percent of the Macedonians, 21 percent of the Serbians, and 29 percent of the Bosnians have forecasted the accession of their country by 2020. 38 percent of the Bosnians, 33 percent of the Serbs and 25 percent of the Macedonians were rather sceptical, answering that their countries will never accede to the EU.¹²

The Balkan Barometer Public Opinion Survey from 2016 also underlines that the adjudication of the EU among the Western Balkans countries is still low, support for the EU integration remaining relatively weak. Furthermore, a rampant Euroscepticism is rearing its head in the countries involved, coupling with a reluctance concerning the probability of accession to the EU.¹³

EU membership has lost its attractiveness especially in Serbia, Croatia, and Bosnia and Herzegovina, in Serbia the number of people opposing (31 percent) accession being larger than those who support it (21 percent), and half (40 percent) are totally indifferent. Surprisingly, in Macedonia the EU has more credibility, as 47 percent of those asked consider EU membership as a good thing, and only 15 percent say it is a bad thing, the number of the indifferent is considerable here as well, with 36 percent. Compared with the 2015 Balkan Barometer, in the current edition of the survey, in case of Macedonia the positive adjudication of the EU has increased, while in case of Serbia it has decreased. Kosovo and Albania have remained the champions of EU integration amongst the Western Balkan states, with a slight decrease in support, 83 percent in case of Kosovo, and 81 in case of Albania.¹⁴

However, if set against other alternatives, accession to the EU scores better in the eyes of the citizens from the Western Balkans countries, mostly because the lack of other viable options. This attitude is similar to the one dominant in the vast majority of the EU Member States. On the other hand, we shall mention that the Western Balkans countries enjoy good trade relations with the EU, and in general there is a great support for the regional free trade agreement CEFTA 2006. Western Balkans countries use the euro as their reserve currency, moreover Montenegro's and Kosovo's currency is the euro.¹⁵

In our opinion the lost of attractiveness, credibility and of transformative leverage in the region, and also these mixed opinions of the citizens of these countries is a consequence of the EU's highly fractured performance, especially during the current migration stalemate.

¹¹Regional Cooperation Council, "Balkan Barometer 2015 Public Opinion Survey," Sarajevo, 2015, 45, accessed May 30, 2017 http://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2015.pdf.

¹² Ibid., 47.

¹³Regional Cooperation Council, "Balkan Barometer 2016 Public Opinion Survey," Sarajevo, 2016, 22, http://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2016.pdf, accessed May 31, 2017.

¹⁴ Ibid., 50.

¹⁵No country is required to set up its own currency or a monetary system in general, so these states have chosen their currency to be pegged to another international currency. Ibid., 22.

AS ASSESSMENT OF THE PERFORMANCE OF SERBIA, OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA AND OF THE EU DURING THE CURRENT MIGRATION/REFUGEE STALEMATE

This sup-chapter is aimed at examining the performance of two of the most predisposed countries to migration influx from the Western Balkans Route, i.e. Serbia and Macedonia, by undertaking a comparative analysis of the European Commission's Progress Reports elaborated in 2015, respectively 2016. Moreover, also the role of the EU will be disclosed, only more briefly due to the fact that the research does not focus on disclosing the EU's approach towards the Western Balkans countries, but their level of compliance with the EU's conditionality principle in the joint management of migration flows, principle which is important in the evaluation of a country's performance concerning the prospect of membership. Consequently, this topic shall be treated in a more superficial way.

SERBIA'S PERFORMANCE

Already in the introductive part of the Commission's Progress Report for Serbia from 2015, the reader could notice a positive appraisal, the Commission emphasizing on Serbia's constructive role in the management of the prevailing migration emergency. The Commission acknowledged the fact that the mixed-migration flows represented an extraordinary burden on the Serbian asylum and migration system, in the same time admitting Serbia's considerable efforts to provide shelter and humanitarian supplies to the transiting third country nationals. The EU's *negative conditionality* principle had been evoked within this document, cautioning Serbia not only to cooperate in the joint management of the rampant migration flow, but also to pursue with its efforts to curtail its citizens' unfounded lodge of asylum applications in the EU and Schengen countries. The continuation of these efforts is the precondition to preserve the existing visa free regime.¹⁶ Due to the increase of asylum applications in recent years of citizens from the Western Balkans countries in the EU and in Schengen countries, in 2015 the European Commission proposed the preparation of a common list of safe countries of origin. This list initially comprised the six Western Balkans countries plus Turkey and was meant to facilitate the fast tracking of asylum applications of citizens coming from those countries which are considered as safe and in full compliance with the principle of non-refoulement.¹⁷

In case of the Western Balkans first we must differentiate between the concepts of *safe country of origin* and *third safe country*: the first one refers to countries that are safe to live in, due to their stable democratic system and compliance with international human-rights treaties, while the second defines a country that it safe for asylum seekers of nationalities other than that of this country.¹⁸ The precept of *safe country of origin* is used according to the Asylum Procedures Directive applicable since 21 July 2015, permitting the use of accelerated procedure without prejudice to the final decision if the applicant comes from a country labelled as safe according to the above mentioned standards. The concept of *safe third country* is important when it comes to the examination of asylum claims lodged by third

¹⁶ European Commission, "Commission Staff Working Document Serbia Report 2015," November 10, Brussels, SWD(2015) 211 final, 4-6, accessed May 29, 2017, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

¹⁷ European Parliament, "Safe countries of origin. Proposed common EU list, Briefing EU legislation in progress," October 8, 2015, 1, accessed June 3, 2017, <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-569008-Safe-countries-of-origin-FINAL.pdf>.

¹⁸ European Stability Initiative, "Turkey a Safe Third Country for Greece," October 17, 2015, 1, accessed May 20, 2017, <http://www.esiweb.org/pdf/ESI%20-%20Turkey%20as%20a%20safe%20third%20country%20%2017%20October%202015.pdf>.

country nationals who have entered on the territory of a state (in our case an EU member state) transiting a country classified as a safe third country.

A brief quantitative analysis of the Eurostat statistics on first time asylum applicants in the EU-28 by citizenship in 2015 and 2016 will give us a sneak peak in the situation concerning the asylum applications lodged by citizens from the Western Balkans countries in the EU. For example in 2015 in Hungary there were 23690 first time asylum applications lodged by Kosovan citizens.¹⁹ On the level of the EU-28 in the same year the asylum applications from Albania and Kosovo accounted for 5% of the total number of applications.²⁰ The number of applications lodged by Kosovan citizens has considerably dropped in the first two quarters (January-June) of 2016 reaching 4785 applications. Also the number of Serbian first time asylum seekers saw a dramatic decrease since 2015. In the second quarter of 2015 (April-June) there were 5010 applications, in the third quarter (July-September) this number slightly decreased to 4890, and in the fourth quarter (October-December) to 2700. Between January-March 2016 the number of Serbian citizens lodging asylum had reduced to 2025, and between April-June to 1705 applications, this signifying a minus 66 percent change between the second quarters from 2015 respectively 2016.²¹ These data show the Serbian government's commitment to cut back its citizens' unfounded lodge of asylum applications in the EU.

Moreover, by designating Serbia as a safe third country, in the fall of 2015, Hungary refused to examine almost all applications for international protection made on its territory by third country nationals from outside Europe. This had led to the outbreak of a diplomatic quarrel between the Hungarian government and its fellow EU Members States and international human rights organizations, like the United Nations High Commissioner for Refugees or the Amnesty International, which have dissented with the labelling of Serbia a safe country, as in their opinion it could not provide genuine opportunities for protection in order to be considered a safe third country.²²

As a consequence of raising the fence at the border with Serbia and Croatia and enforcing border patrols by Hungary, migrants are stuck in Serbia, Belgrade turning into a "pitfall for refugees with no way out", and also the Serbian Ministry's of Labour and Employment ban issued on the 4th of November 2016 on NGOs giving them food, has made their situation even more gruesome.²³ As revealed by Ivan Gerginov from the Serbian Commissariat for the Refugees, currently in November 2016 the government has 1700 people in permanent centres and 3000 in one stop centres, however the task would be the creation of 6000 places in collective centres.²⁴

¹⁹ Eurostat, "Five main citizenships of (non-EU) asylum applicants, 2015 (number of first time applicants, rounded figures) YB16," 2015, accessed May 20, 2017, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Five_main_citizenships_of_\(non-EU\)_asylum_applicants,_2015_\(number_of_first_time_applicants,_rounded_figures\)_YB16.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Five_main_citizenships_of_(non-EU)_asylum_applicants,_2015_(number_of_first_time_applicants,_rounded_figures)_YB16.png).

²⁰ Eurostat, "Asylum statistics," 2016, accessed May 23, 2017, http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

²¹ Eurostat, "First time asylum applicants in the EU-28 by citizenship, Q2 2015 – Q2 2016," 2016, accessed May 31, 2017, http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_time_asylum_applicants_in_the_EU-28_by_citizenship,_Q2_2015_%E2%80%93_Q2_2016.png.

²² Asylum Information Database, "Hungary Adopts List of Safe Countries of Origin and Safe Third Countries," July 23, 2015, accessed June 4, 2017, <http://www.asylumineurope.org/news/07-01-2016/hungary-adopts-list-safe-countries-origin-and-safe-third-countries>.

²³ Natalia Zaba, "Survival gets tougher for migrants stuck in Serbia 2016," *Balkan Insight*, November 10, 2016, accessed May 29, 2017, <http://www.balkaninsight.com/en/article/survival-gets-tougher-for-migrants-stuck-in-serbia-11-10-2016>.

²⁴ Zaba, "Survival gets tougher for migrants stuck in Serbia 2016"

Chapter 24 of the 2015 Report contains the provisions concerning progress in *Justice, freedom and security* containing aspects related to legal and irregular migration, asylum and visa policy. Concerning the area of *legal and irregular migration* it is stressed once again Serbia's constructive approach in dealing with the migration crisis, highlighting the quick setup of a one-stop centre in Preševo as well as the establishment of refugee aid centres in the vicinity of the Macedonian, Hungarian and Croatian borders. As a consequence of the mixed-migration flows the documents reported an increase in criminal activities, especially related to smuggling of people. The rise in criminal charges for human smuggling denotes the vigilance of the Serbian authorities, as in June 2015 the Serbian law enforcement agents arrested nine customs officials suspected of allowing the illegal cross of third country nationals at the border with Hungary. There were filed 549 criminal charges against 816 persons facilitating irregular migration. According to statistics (5576 cases) in the first half of the past year 98 percent of the cases of illegal border crossing at the border with Macedonia were exposed by the Serbian border guards and not by their Macedonian homologues. Furthermore, it is emphasized the efficiency of the readmission agreement concluded between Serbia and the EU, which implemented in 2014 led to the return of 6962 people to Serbia in comparison to the 6239 in 2013. The Commission underlined the indispensability of continuous efforts to assure the supply of well-trained staff capable of addressing the challenges and consequences of a growing migratory pressure, prompting the Serbian authorities to pay a particular attention to the needs of unaccompanied children, minors and vulnerable groups. On the Commission's *to do list* for Serbia, an enhanced coordination among all institutions implicated in the prevention of irregular migration and also the alignment of the legislative framework on legal migration with the EU *acquis* occupy a crucial part.²⁵

Concerning *asylum* the report underlined the importance of the adoption by the Serbian government of the *Response plan in the case of mass influx of migrants* in September 2015, which targeted the management of the flow of third country nationals who were seeking to lodge asylum applications in the EU or in Serbia. According to the progress report in November last year Serbia's accommodation capacity was of 810 beds, since then, as it was highlighted earlier, its capacity has increased significantly. The report revealed that between January and September 2015 out of the 169156 migrants registered when transiting Serbia, only a few people, 546 applied for asylum, 16 of which have received asylum and 14 subsidiary protection. The Commission urged the Serbian authorities to improve the asylum processing system and to align it to the EU *acquis* and international standards by establishing a protection-sensitive screening mechanism, which would clearly differentiate between economic migrants and people in need of international protection. As in case of the previous sub-point, that of the management of legal and irregular migration, the Commission prompts the intensification of cooperation between the various institutions responsible for asylum and the competent law enforcement authorities (especially border police), in the same time pointing out the prevalence of corrupt practices and actions carried out by organized crime groups specialized in smuggling human beings.²⁶

When it comes to the assessment of the *visa policy*, the stance of the Commission towards the efforts of Serbia to reduce its citizens' unfounded lodge of asylum applications in the EU member states and in the Schengen associate countries was rather positive. The report denoted a clear improvement in the operational checks on tourist agencies, transport companies, border control and surveillance, also accounting the filing of 12 criminal charges for facilitating the abuse of the right to asylum in a foreign country. Although Serbia's

²⁵ Serbia Report 2015, 59-60.

²⁶ Serbia Report 2015, 60,

cooperation and progress in this matter has been exemplary, the document reveals that there's still much to be done in the future, urging the central administration to elaborate policies which would enhance the social and economic inclusion of the most vulnerable groups, such as the Roma, which are most likely to migrate.²⁷

Concerning *regional cooperation on border management*, Serbia has scored positive points by improving its infrastructure and equipment at the border crossing points, marked by the establishment of a risk analysis unit in January 2015. The setup of a Joint Centre for Police Cooperation between Bosnia and Herzegovina, Montenegro and Serbia, in Trebinje for the improvement of regional capacity to tackle cross-border and irregular migration is perceived as an example of good practice of cross-border police cooperation. Moreover, the document stresses the existence of an active cooperation between Serbia and Frontex, goading the government to make further improvements in various fields.

The Progress Report on Serbia from 2016 reveals to us a similar picture to the one already presented in the previous lines, reiterating Serbia's commitment to assist the EU in the joint management of the mixed migration influx and its continuous efforts to decrease its citizens' unfounded asylum applications in the EU and Schengen countries.²⁸

On the chapter of *legal and irregular migration* the report notes a partial alignment with the EU *acquis* of Serbia's institutional and legal framework, prompting the necessity of adopting the legislation on the return of unsuccessful asylum seekers and apprehended irregular migrants, and of a new strategy and action plan for 2016-2020, aimed at tackling the phenomenon of irregular migration. Within the document is restated the need to strengthen and improve the operational cooperation between the various institutions responsible for migration management, as stated these tasks being divided between various state organs, departing from the Ministry of the Interior, to the Commissariat for Refugees and Migration, the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Labour, Employment, Veteran and Social Policy, a specialized unit within the Border Police Directorate dealing with the fight against irregular migration and finally a specialised section within the Criminal Police Directorate, dealing with migrant smuggling. The accommodation facilities provided by the government are perceived inadequate, as according to the report Serbia has only 144 places and just one permanent reception centre at Padinska Skela to accommodate irregular migrants, which has to be extended without a delay. Moreover, it is highlighted the importance of monitoring through flexible mechanisms the changing patterns in migration flows in order to anticipate and cope with possible unforeseen rise in their number. The Serbian law enforcement agent's positive record in detecting cases of human smuggling had successfully continued, the authorities filing 759 criminal charges against 1127 offenders, who were caught while trying to smuggle 8068 third country nationals. In comparison with the same period of 2015, in the first half of 2016 the number of people detected at the border had decreased to 1309. According to the Commission's report, at the end of August approximately 4550 migrants were piled up in Serbia, only to 80 percent of which were given accommodation in various centres. Despite Serbia receiving substantiate assistance from the International Organisation for Migration through its Assisted Voluntary Return Programme, the number of effective return of those people who had received a final negative decision rejecting their asylum claim has been unjustifiably low. By the end of August 2016 only 40 people have agreed to voluntarily return to their counties of origin, thus the Commission urges Serbia to set up and implement a robust return mechanism for these

²⁷ Serbia Report 2015, 60-61.

²⁸European Commission, "Commission Staff Working Document Serbia Report 2016, "November 9, Brussels, SWD(2016) 361 final, 4, accessed May 29, 2017, http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_serbia.pdf.

categories of people. The situation is somewhat better related to the readmission agreement, which in opposite to the return mechanism is being implemented satisfactorily, as the year 2016 marked the signing of 19 implementing protocols with the EU, nonetheless Serbia is lagging a bit behind awaiting the conclusion of agreements with a few of the so called *source or origin countries for irregular migration*, like Morocco, Bangladesh, Pakistan, Turkey and Ukraine.²⁹

The 2016 Progress Report relates of an amendment in the *asylum law* of the country, with the purpose of aligning it to the EU *acquis*, foreseeing an effective access to the asylum procedure, regardless of nationality and a fair and prompt review process of the asylum applications. While admitting the existence of the necessary entities in Serbia to handle the asylum applications, when it comes to the designation of the *safe third country* and *safe country of origin* criteria, the Commission recommends additional efforts for the full alignment with the *acquis communautaire*. Within the document is exposed the demand for the Serbian authorities to considerably improve their asylum review processing and to undergo regular training with the purpose of enhancing their interviewing and screening techniques, useful at distinguishing between persons in need of international protection and others who are not entitled to such protection. Till the end of August 2016, the Serbian authorities registered 538 asylum applications, 11 of which had received a refugee status, 13 subsidiary protection, while in the case of 63 people a negative decision had been issued. Surprisingly, in case of 356 persons the procedure had to be suspended due the disappearance of the applicants before the termination of the review process. Compared with the previous year, there has been a clear improvement in the institutional framework, the overall capacity of the existing five permanent reception centres growing to 1000 beds, with the possibility of extension to 5340 beds in the vent of some extraordinary migration flow. Withal, as signalled by the Commission, the open status of the reception centres creates the opportunity for the infiltration of smugglers and that makes possible the performance of various organized crime activities, thus as a result of an exchange of letters between the European Asylum Support Office (EASO) and the Serbian Minister of Interior, the EASO committed itself to establish a broader framework for cooperation with Serbia in order to tackle this phenomenon.³⁰

As accentuated before, in 2016 Serbia has made a significant progress in reducing the number of unfounded asylum claims of its citizens in the EU, mostly through awareness-raising campaigns and checks on tourist agencies, transport companies, enhanced border checks and surveillance. According to statistics, between January and May 2016, only 4 criminal charges were registered against 4 people for facilitating the abuse of the right to asylum in a foreign country. The continuation of these efforts is a precondition for the preservation of the visa free regime.³¹

The 2016 Progress Report argues that the *Integrated Border Management Strategy* is finally in line with EU law, and salutes Serbia's efforts to detect and eradicate corruption at the borders, by implementing the shift rotation of its border police officers between border posts, green border checks and surveillance. The positive impact of this initiative had already been visible, as the Serbian law enforcement agents uncovered a corruption case involving 28 officers. For the continued success of this initiative, the extension of the video surveillance system in real time to all border crossing points is of a major importance. The joint working group for unauthorised border crossing points with border sections with Bosnia and Herzegovina and Montenegro had zestfully continued its activity in the current year. The cooperation between the Serbian, Bosnian and Montenegrin border police officers has been

²⁹ European Commission, "Commission Staff Working Document Serbia Report 2016", 67.

³⁰ European Commission, "Commission Staff Working Document Serbia Report 2016", 67.

³¹ European Commission, "Commission Staff Working Document Serbia Report 2016", 68.

outstanding, seconding each other at the joint trilateral contact centre from Trebinje, also the working arrangements with Frontex were smoothly enforced, the latter conducting joint operations at the Serbian-Croatian and Serbian-Hungarian borders.³²

FORMER YUGOSLAV REPUBLIC OF MACEDONIA'S PERFORMANCE

The same word usage could be identified in the bulk of the Commission's Progress Report for Macedonia from 2015 and 2016, however the Chapter on *Justice, freedom and security* in the 2015 Progress Report is significantly shorter than the Serbian one, and also the adjudication of Macedonia concerning its performance during the migration/refugee crisis is different. As in the case of Serbia, the Commissions acknowledged the substantial burden on Macedonia's asylum and migration system, triggered by the increased mixed-migration flows, stating that the country had taken measures to provide shelter and humanitarian supplies for the third country nationals transiting the country, however the *constructive* adjective was not attributed to its management of the migration deadlock.³³ The same *negative conditionality patterns* prevail here as in the aforementioned documents, the EU conditioning its support and the implementation of the visa-free travel regime to Macedonia's active involvement in the joint management of the migration flows, and the significant decrease of its citizens unfounded asylum applications in the EU and Schengen countries. Thanks to the continuous efforts of the Macedonian government the number of unfounded asylum claims fell by approximately 10 percent in 2014.³⁴

As stated in the 2015 Report, although Macedonia has made some progress by applying new laws in the areas of migration, money laundering and terrorism, the country is only half way to implementing the *acquis* in this field. During 2015 Macedonia was one of the main transit countries for flows of mixed migrant groups via Turkey and Greece towards northern Europe. The Commission noted that despite the adoption of urgent measures to tackle this phenomenon, the national authorities were simply overwhelmed by the continuously growing numbers of migrants. During summer, Macedonia had to face around 5000 new arrivals through Greece on a daily basis, an avalanche which was somehow moderated by the urgent legislative package elaborated on the 18th of June 2015, enabling the issuance of documentation and the grant of a limit of 72 hours legal stay to register their application, after expressing clearly the intention to claim asylum. This new legal groundwork not just trimmed the efforts of organized crime groups specialized in human smuggling, but also facilitated the migrants' access to public transport, thus preventing their death in accidents while trespassing alongside railway tracks when transiting the country illegally. Furthermore, the changes brought by the new legislative framework had seized the transfer of third country nationals to the Centre for Foreigners from Gazi Baba, heavily criticized for the regnant conditions, serious under-capacity and overcrowding. The Commission recognizes the efforts of the country to cope with such a huge migration pressure; however it suggests that more focus shall be rendered to the elaboration of emergency and contingency plans for a more efficient management of migration flows. Human trafficking and other forms of organized crime activities continue to represent a

³² European Commission, "Commission Staff Working Document Serbia Report 2016", 69-70.

³³ European Commission, "Commission Staff Working Document The former Yugoslav Republic of Macedonia 2015 Report," November 10, Brussels, SWD (2015) 212 final, 6, accessed June 3, 2017, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf.

³⁴ European Commission, "Commission Staff Working Document The former Yugoslav Republic of Macedonia 2015 Report". 62-63.

significant challenge for the central administration of the country.³⁵ Between the 19th of November 2015 and the 31st of January 2016 the Macedonian border police agents discovered plenty of modified Greek registration papers used by third country nationals to enter across the southern border. Thus, the country ranked among the first from the Western Balkans countries in terms of detecting document fraud.³⁶

On the chapter of *asylum*, the report notices an increase in the number of applications from 1364 in 2014 to 1730 by the end of August 2015, ending with a grant of asylum to 11 people in 2014 and only three in 2015. Among the positive points we number the appointment of a full-time representative of the asylum unit opened in Vizbegovo, and the improvement of the asylum procedures, however after a thorough assessment it revealed that the asylum recognition of the country has remained critically low.³⁷

The alignment of the legislation concerning *visa policy* with the EU *acquis*, is the most satisfying of all the assessed categories till now, prompting the continuance of the smooth implementation of the visa-free travel regime with the EU.³⁸ According to Eurostat in 2014 Macedonian citizens were among the top first time asylum applicants in the EU-28, registering 10330 unfounded asylum applications.³⁹ In the statistics from 2015, respectively 2016 Macedonian citizens are not listed among the top first time asylum seekers in the EU and Schengen countries.

Due to the persistence of obvious similarities between the Progress Reports from 2015 and 2016 and of the strict formal requirements concerning the length of the research article, we shall disclose only the most noticeable changes from the 2016 Report.

The report argued that the country's level of preparedness to implement the *acquis* in the field of *Justice, freedom and security* is moderate, as it registered limited progress by amending existing laws on foreigners, criminal code, border control and adopting critical documents in several areas concerning police cooperation and terrorism prevention. Macedonia is urged render high priority to step up actions against people smuggling and human trafficking and to advance with the capacity building and accommodation improvement for the management of the mixed migration flows.⁴⁰ The document reports about the establishment of a Crisis Management Centre in 2015 (with a Steering Committee and Assessment Group Centre for Crisis Management) mandated with the task of managing migrant and refugee flows of which mandate was extended until 2017. The Commission draws attention on the lack of clarity concerning the division of powers and responsibilities amongst the newly established agencies specialized in the migration management. Within the report is highlighted the intensity of the pressure on the Macedonian migration and asylum system generated by the great influx of third country nationals, the authorities registering a total number of 428597 people transiting the country in the period from September to November 2015. Between January and March 2016 this number fell to 89628, the vast

³⁵ European Commission, "Commission Staff Working Document The former Yugoslav Republic of Macedonia 2015 Report", 62.

³⁶ Frontex, "Western Balkans Annual Risk Analysis 2016," May, Warsaw: Risk Analysis Unit, 2016, 15, accessed June 3, 2017, http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2016.pdf.

³⁷ Former Yugoslav Republic of Macedonia Progress Report 2015, 62.

³⁸ Former Yugoslav Republic of Macedonia Progress Report 2015, 62-63.

³⁹ Alexandros Bitoulas,, "Asylum applicants and first instance decisions on asylum applications: 2014 - Issue number 3/2015, *Eurostat*, 2015, 4, accessed June 6, 2017, <http://ec.europa.eu/eurostat/documents/4168041/6742650/KS-QA-15-003-EN-N.pdf/b7786ec9-1ad6-4720-8a1d-430f9c55018>.

⁴⁰ European Commission, "Commission Staff Working Document The former Yugoslav Republic of Macedonia 2016 Report," November 9, Brussels, 63 SWD(2016) 362 final, 63, accessed May 25, 2017, http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf.

majority coming from Syria, Afghanistan and Iraq. However, the Commission argues that these numbers could be bigger due to the inefficient registration capacity of the authorities. Due to the great migrant stream transiting the country in August 2015 a state of emergency was declared at the border, later extending it till the 30 of June 2017, enabling the involvement of the army in the crisis management, which was assisting the border police. As an attempt to stabilise the situation, the Macedonian authorities enhanced control at the borders and established a so called admissibility criterion to the country based on nationality, permitting only the entry of Syrians, Iraqis and Afghans since November 2015. This had a positive effect, significantly reducing the avalanche of migrants coming via Greece, so in October 2016 the number of stranded persons in the country has remained around 200. After an in-depth assessment, the Commission stated that 398552 third country nationals were detected while trying to fraudulently cross the Macedonian border, the vast majority of them originating from Syria, Iraq, Afghanistan and Pakistan. Between January and August 2016, the authorities had reported 84 cases of attempts to smuggle 1480 migrants, in the end the authorities submitting criminal charges against 72 people. While conceding the improvements made after recent renovation of the reception centre for irregular migrants awaiting return, the analysts drawing up the report stress that the facility in question is still not satisfactory for the accommodation of vulnerable categories of persons as it provides limited access to healthcare, water and sanitation.⁴¹

In the field of *asylum*, the country has the necessary institutions; however it is lacking staff, and thus it is struggling to cope with the process in time of asylum applications, the report highlighting the need to improve the interviewing and screening techniques of the Macedonian officials. The country had received some black points due to its failure to set up a database for checking the personal data, photographs and fingerprints of asylum seekers and for its continuous low asylum recognition rate, as in 2015 out of the 1578 requests only 34 final decisions were taken, of which 13 negative and only 4 positive. This year in the period from January to July 2016 the number of asylum applications had substantially decreased, registering only 525 applications, 23 of which were rejected and only 5 were given subsidiary protection. Due to the applicants disappearance from the reception centre the other ongoing procedures were terminated.⁴²

According to the Western Balkans Quarterly of Frontex, in the first quarter of 2016 Macedonia ranked second after Serbia in detecting document fraud at the border⁴³, in the second quarter Macedonia managed to outstrip Serbia, the exact numbers are not being disclosed within the document.⁴⁴

Advancement has been recorded in the field of *visa policy*, the legislation of the country being largely aligned with the *acquis*, Macedonia undertaking serious actions to halt their citizens' unfounded lodge of applications in the EU and Schengen associate countries. From January to June 2016 the number of asylum claims issued by Macedonian citizens halved, with only 3551 compared to the 7532 registered in the same period in 2015.

⁴¹ European Commission, "Commission Staff Working Document The former Yugoslav Republic of Macedonia 2016 Report", 64-65.

⁴² European Commission, "Commission Staff Working Document The former Yugoslav Republic of Macedonia 2016 Report", 66.

⁴³ Frontex, "Western Balkans Quarterly. Quarter 1. January-March 2016," June, Warsaw: Risk Analysis Unit, 2016, 8, accessed June 3, 2017, http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_Q1_2016.pdf.

⁴⁴ Frontex, "Western Balkans Quarterly. Quarter 2. April-June 2016," October, Warsaw: Risk Analysis Unit, 2016, 8, accessed June 3, 2017, http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_Q1_2016.pdf.

THE EU'S PERFORMANCE

As the EU Enlargement Progress Reports show, almost after two decades of launching the Stabilisation and Association Process the Western Balkans (apart from Croatia) countries are still not prepared to accede to the EU. Despite the countries registering progress in many areas, and beneficial winds blowing from Brussels, signalled by the continuation of the Berlin Process in August 2015, and of the Western Balkans 6 meetings, the launch of Western Balkans Connectivity Agenda, and of the Declaration on the Solution of Bilateral Disputes signed by the Ministers of Foreign Affairs during the August 2015 Vienna Summit, their accession to the EU is far away. However, in the midst of the current crisis the EU has find itself in a paradoxical situation, as it needed the assistance of these countries in order to manage the migrant flows, but it could not entice them with the possibility of an accelerated integration process, due to their obvious lack of preparedness.⁴⁵

The Union tried to resolve the stalemate by organizing a series of conferences, inviting the leaders of the Western Balkans countries and by offering financial assistance to ease the pressure triggered by the increased migration flow. Of the multitude of meetings organized at EU level, the most important were: the Extraordinary European Council on Migration meeting on the 23rd of September 2015, the High-Level Conference o the western Balkans Route on the 8th of October, the Mini-summit on the Western Balkans Route on the 25th of October and a key debate on migration the European Parliament on the 27th of October 2015 etc.⁴⁶

Under the aegis of collective responsibility the Mini-summit on the Western Balkans Route gathered not just the representatives of the Western Balkans countries and of Austria, Bulgaria, Germany, Greece, Hungary, Romania and Slovenia but also those of Turkey, Jordan and Lebanon. The leaders have agreed upon a *17 points plan* suggesting practical measures for the management of the migration crisis, among which we mention the nomination of national contact points along the Western Balkans route in order to coordinate the permanent exchange of information, enabling the gradual, controlled and orderly movement of third country nationals along the route. The states involved were asked not to facilitate the movement of migrants to the borders of their neighbours without prior notification, and also to activate the EU's Civil Protection Mechanism if considered necessary.⁴⁷

The EU Civil Protection Mechanism can be triggered by any of the Member States facing a migratory crisis, allowing the mobilisation of various types of assistance from interventions teams, to equipment and medical supply, furthermore is enables cooperation not just between the 28 EU member states, but also between the EU, Iceland, Norway, Macedonia, Montenegro and Serbia and Turkey. Hungary and Serbia triggered the mechanism in September 2015, Slovenia and Croatia one week later, and Greece in December 2015.⁴⁸ Among the greed 17 points we find the commitment of the EU financial institutions, such as the European Investment Bank, the European Bank for Reconstruction and Development and the Development Bank of the Council of Europe to provide assistance

⁴⁵Marko Kmezić and Florian Bieber, "Policy Brief Western Balkans and the EU: Beyond the Autopilot Mode," Balkans in Europe Policy Advisory Group, 2015, 3, accessed June 7, 2017, <http://balkanfund.org/wp-content/uploads/2015/11/BIEPAG-Western-Balkans-and-the-EU-Beyond-the-Autopilot-Mode.pdf>.

⁴⁶Velina Liyanova, "The Western Balkans Frontline of the migrant crisis, European Parliament, Brussels, 2016, 8. Accessed June 7, 2017, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI\(2016\)573949_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI(2016)573949_EN.pdf).

⁴⁷[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI\(2016\)573949_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI(2016)573949_EN.pdf), 9-10.

⁴⁸[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI\(2016\)573949_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI(2016)573949_EN.pdf), 9-10

to those countries which are involved and are burdened by the migration flow. Furthermore the countries in need can ask assistance from Frontex and can activate the Rapid Border Intervention Team (RABIT) mechanism.⁴⁹ In order to increase their operational capacity in migration management Serbia and the Former Yugoslav Republic of Macedonia received 10 million Euros from the European Commission in addition to the other 22 million Euros allocated for humanitarian aid.⁵⁰ As the tightening of border controls along the Western Balkans route, the EU is ought to be prepared to intensify humanitarian assistance along the whole route at short notice.⁵¹

Moreover, besides the aforementioned help, the EU has committed to give additional financial and technical support to the candidate and potential candidate countries from the Western Balkan regions, through the Instrument for Pre-accession Assistance (IPA) and its 2014 successor, IPA II for made or planned activities related to migration, such as projects for introducing integrated border management, upgrading of reception centres, reforming national asylum systems, strengthening institutions for achieving effective, migration management and countering the traffic of migrants and visa policy.⁵² Since 2007 till the beginning of 2016 Albania has benefitted of 4.5 million Euros, Bosnia and Herzegovina of 16.8 million, the former Yugoslav Republic of Macedonia of 24 million, Kosovo of 7.1 million, Montenegro of 22.6 million and Serbia of 54 million Euros overall pre-accession support for migration related purposes.⁵³ The intent of the EU to provide solutions and a coherent message to the Western Balkans countries was somewhat curtailed mostly because of the transit countries' divergent responses to crisis, marked by the raise of fences by Hungary, the amendment of asylum legislations restricting the access of refugees or the closure of borders and the involvement of the army in border surveillance activities.

We argue that the European Union's performance during the prevailing migration deadlock was fragmented as the EU could provide a coherent and firm solution neither to its Member States, nor to the countries from the Western Balkans. Furthermore, we stress that despite the criticism, the Western Balkans countries given their circumstances, have performed beyond their power and capabilities, proactively cooperating with the EU's supranational entities and Member States.

CONCLUSIONS

The current article targeted to assess the level of compliance in the joint management of the current migration crisis of two Western Balkans countries with the EU's conditionality principles, departing from the presumption that besides the application of the Copenhagen criteria and of the conditions set by the Stabilization and Association Process, the management of migration crisis is also important in the evaluation of their performance

⁴⁹ European Commission, "Meeting on the Western Balkans Migration Route: Leaders agree on 17 points of action," Press release IP/15/5904 October 25, Brussels, 2015, 2, accessed June 1, 2017, http://europa.eu/rapid/press-release_IP-15-5904_en.htm.

⁵⁰ European Commission, "Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration," Brussels, October 2, COM(2016) 85 final, 6, accessed June 6, 2017, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf.

⁵¹ European Commission, "Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration," 16.

⁵² European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, "Joint Communication to the European Parliament and the Council Addressing the Refugee Crisis in Europe: The Role of EU External Action," September 9 JOIN(2015) 40 final, Brussels, 2015, 6, accessed June 2, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015JC0040&from=EN>.

⁵³ Liyanova, *The Western Balkans Frontline*, 11.

concerning the prospect of a future membership. The progress reports prepared by the Commission offered us a genuine picture of how these countries performed and collaborated with the European specialised agencies and their neighbours during the rampant migrant flows. We have chosen Serbia and Macedonia as our main case studies due to their involvement as main transit countries along the Western Balkans route. The reports have revealed the abundance of negative conditionality principles, as any type of assistance from the EU, such as the visa facilitation agreement is conditioned to their continuous and active involvement in the joint management of the crisis. Despite the existing shortcomings, both Serbia and Macedonia tried to comply with the requirements set the by the Union, noticing a true commitment from their part to continue with the reform process, however according to the evaluation Serbia is clearly performing better than its Macedonian neighbour. The good performance of the Serbian authorities in migration management is being overshadowed by the lack of the citizens' support for EU membership, as disclosed by the Balkan Barometer Survey. Moreover, we state that although the EU intended to send a coherent message to the Western Balkans countries, due to the fragmented approach of its Member States, it did nothing but export instability and insecurity to these countries, further decreasing the credibility of the United Europe project in the eyes of the Western Balkans people.

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MIGRATION OF TERRORISTS IN SUB-SAHARAN AFRICA

Nicolae MELINESCU¹

ABSTRACT: ENORMOUS PROGRESS HAS BEEN RECORDED IN FIGHTING BOTH TERRORISM AND MARITIME PIRACY IN THE YEARS FOLLOWING THE ATTACKS IN THE UNITED STATES IN SEPTEMBER 2001. THE PRESSURE PUT BY THE INTERNATIONAL COMMUNITY ON EXTREMIST GROUPS AND SEAFARING BANDITS HAD SOME SIDE EFFECTS, NONETHELESS. PIRATES IN SOMALI WATERS LEFT THE SAFETY OF THE TERRITORIAL WATERS AND VENTURED FURTHER OUT INTO THE OCEAN IN SEARCH OF NEW TARGETS. SOME OF THEM SAILED DOWN SOUTH AS FAR AS THE MOZAMBIQUE SHORES TO OUTSMART THE INTERNATIONAL WATER PATROLS. NIGER DELTA VIGILANTES MAY HAVE USED PART OF THE ILLICIT MONEY GAINED FROM OIL BUNKERING TO SUPPORT THE JIHADISTS FROM BOKO HARAM. TERRORISTS, IN THEIR TURN STARTED TO SEARCH NEW VULNERABLE TARGETS OUTSIDE THEIR TERRESTRIAL OPERATION GROUNDS. THE HIGHJACKING OF THE CRUISER ACHILLE LAURO IN 1985 AND THE ATTACK ON THE AMERICAN GUIDED-MISSILE DESTROYER USS COLE OUTSIDE THE PORT OF ADEN IN 2000 PROVED THAT THE SEA WAS NOT OUT OF REACH FOR CRIMINAL ACTS. WHAT THE PLANET'S OCEANS NEED UNDER THE CIRCUMSTANCES IS NOT ONLY A TIGHTER REGULATED MARITIME REGIME TO PREVENT ARMED ATTACKS BUT ALSO, A SEAT IN THE UNITED NATIONS, AS A BRITISH ADMIRAL HAS SUGGESTED.

KEY WORDS: SEA PIRACY, MIGRANTS, SEA ROBBERIES, MARITIME SAFETY, FAILED STATES

The international community put a strenuous pressure on terrorist groups after the attacks of the 11th of September 2001. Closer monitoring of arms deals, of illegal financial operations and a tightly knit-network of intelligence agencies from the US and from allied, partner countries closed in a circle of fire around extremist, violent factions. Strategic terrestrial targets like nuclear plants, airports, government buildings, international organizations headquarters witnessed improved security arrangements designed to protect them and to discourage possible attacks.

Unfortunately, such measures covered mainly Europe, North America and industrialized countries from the Far East like Japan, South Korea and China, to a certain extent. Failing or failed states like Afghanistan, Iraq and Libya were the new terrorist hubs for training insurgents and for planning armed attacks against civilians and democratic institutions.

At enormous costs, some areas of the world concerned with their own security have been gradually better prepared to counter terrorist attempts, while new regional conflicts like the one in Syria turned large populated areas from sensitive countries into new havens for extremist operations. The migration flow that local or regional conflicts produced brought

¹ Associate Lecturer, "Babes-Bolyai" University of Cluj-Napoca

hundreds of thousands of civilians to the rich European countries. Sequential measures to stem the tide of so-called refugees proved feeble, hectic palliatives for a process which caught Europe completely unprepared. Once the Turkish gateway seemed to reduce the flow to a dripping, following the three billion euros earmarked by the European Union to slam the door for Syrians, Afghans or Pakistanis, migration of civilians shifted its course from the enlarged Middle East, first to eastern and northern Africa. Soon, the pressure from countries like Egypt and Sudan, forced migrants to take the route through the Sahel area and Libya. The change of venue was the outcome of a secret plan worked out by the European Union and its conductor Germany. On March the 23d 2016, the foreign ministers of the 28 member countries (with Britain still clinging on the organization) earmarked 35 million euros for eight African countries to fight illegal human trafficking for duration of three years. Two contradicting facts questioned the rightfulness of the project. First, part of the money would inevitably go to despots and tyrant rulers like the Sudanese Omar Hassan al-Bashar, indicted by the International Criminal Court for genocide and crimes against humanity. Secondly, the so-called TOP 37, as the EU document was labeled, used the term “dictators” for local leaders, proving beyond any doubt that those behind the project were perfectly aware that part of the money, if not its entirety, would end up in private pockets to support local political police and repressive state systems. The German paper Der Spiegel, which scooped the story, linked the secret regimen of the document to such irregularities and quoted an insider from the office of the Union’s High Representative for Foreign Affairs and Security Policy who stated that the secrecy of the plan was to confer reliability and credibility to the EU’s commitment in its fight against illegal migration². Most recently, even the sieving along this escape route from poverty and conflict through Libya across the Mediterranean came under monitoring. Migrants from all over Sub-Saharan Africa were undeterred and followed a western escape along the coast of Sierra Leone, Senegal, up north towards Gibraltar. (See map below)



²<http://www.spiegel.de/international/world/eu-to-work-with-despot-in-sudan-to-keep-refugees-out-a-1092328.html>, accessed 23 January 2017.

As ground-security measures were being set up, terrorist groups sought new battlefields where to perpetrate their criminal acts. Consequently, the most promising of them all seemed the high seas.

After 1990, maritime piracy proved that international waters were a vast unregulated territory, difficult to monitor firstly because the law of the sea adopted by the United Nations (UNCLOS) in 1982 provided no direct operational role in fighting crimes committed in the international waters, and secondly large parts of the Earth's oceans were out of the regular, crowded sea passages. The Gulf of Aden, a paradise for the Somali pirates, has always been a heavy traffic route, yet more than four hundred commercial vessels were attacked and highjacked in 2010 alone because that particular sea lane is three times larger than the whole European continent and almost impossible to become rock-bottom safe for seafarers.

Soon, one country after another started to be concerned with their connections to the world via the seven seas and produced whatever safety naval force they could provide. The European Union, NATO, individual countries like China, Russia, Israel, Japan, even Iran and North Korea deployed their military vessels in the west of the Indian Ocean to put an end to Somali piracy. But, as Andreas Graf concluded, remedies in the Gulf of Aden relied on the international presence, bordering Somalia as a failed state losing with no border police, and no navy to patrol the territorial waters. "A more promising strategy to curb maritime violence in the Gulf of Aden needs to make allowance for the following three lessons: First, the efforts have to be regionalized. Second, stepping up regional capacities of policing requires decisive international support in terms of finances, equipment and training. Finally, in the long run, political stability and economic development play a crucial role towards curbing violence in the area"³. At the end of two long decades when almost two thousand sailors were killed, countless went through the ordeal of being held hostages for ransom, after billions of dollars lost or paid to captors (between three and sixteen billion dollars a year⁴), the relentless pressure put on pirates by the international community started to pay back.

The other African area tortured by vigilante commandoes has been the Niger Delta and the Gulf of Guinea where armed robbery incidents registered a 30 per cent increase in 2014 alone, according to Control Risks. "Criminal groups continue to expand their operational areas south of Nigeria for the first time. Kidnapping-for-ransom off the Niger Delta region saw a significance increase, both in activity with incident numbers up by 355 per cent compared to 2013, and in operational range, with successful attacks being recorded further from the Nigerian coast"⁵.

When countermeasures against Somali pirates yielded some results, 2014 being the first year without new attacks on commercial vessels sailing from the Red Sea into the Indian Ocean, the centre of maritime crime moved to the West African waters, which soon became a new global hotspot for theft and plunder.

Fighting this new trend seemed more difficult than in the case of Somalia for several reasons. First, the latter's government cannot control even half of its land, let alone the territorial waters. Henceforth, the international community was asked to come to the rescue and even to operate within the 12 miles limit, based on the Un Security Council resolution

³ Andreas Graf, *Countering Piracy and maritime terrorism in South East Asia and off the Horn of Africa*, Pirat_Working papers on maritime Security, Nr. 5, April 2011, p.5
www.maritimesecurity.eu/fileadmin/content/news_events/workingpapers/PiratT_Arneitspaper_No4_2001_Graf.pdf, accessed 13 May 2015

⁴ "In 2003 ship owners reported 445 attacks in which 92 seafarers were killed and 359 were assaulted and costs in 2004 amounted to \$16 billion per year" Gal Luft and Anne Korin, "Terrorism Goes to Sea"
<http://foreignaffairs.com/articles/oceans/2004-11-01/terrorism-goes-to-sea>, accessed 14 November 2004

⁵ *Piracy, Terrorism and Diverse Maritime Threats*, www.maritime-executive.com/article/2014-Piracy-Terrorism-Diverse-Maritime-Threats-2014-03-14, accessed 28 November 2016.

1880. With Nigeria, the setting is completely different. Much of oil bunkering, armed terror and rebellious militia gangs operate against the backdrop of the territorial waters and even inside the national territory in the Nigerian Delta, which makes international intervention an aggression against a sovereign state. Yet Nigeria seems closer to terrorism than Somalia because local vigilantes, like the Niger Delta Defence Force and others like it took refuge under political claims such as defending the local population brutally impoverished by the federal government in conjunction with major international oil corporations.

The Ocean Piracy Report, quoted by *The Independent*, signaled out “unacceptable” levels of piracy both inside the Niger Delta and outside of it. The cause identified by its authors hinge on a lack of, or poor cooperation between the authority and the oil companies⁶. A very likely outcome could be a revival of insurgent attacks with a different aim: to provide money for the furious and brutal commandoes of Boko Haram. Basically, this is one major transgression that ocean robbery and hostage taking may witness in the near future. In early April 2015, the UN High Commissioner for Human Rights, Prince Zeid Raad al Hussein told the Organization’s Human Rights Commission in Geneva that “Boko Haram have been murdering dozens of young women and girls they had taken as «wives» and using children as «expendable cannon fodder»”⁷.

A spike in attacks accompanied such a savage behaviour on land and at sea, although a direct connection has not been proven by independent sources so far. Yet, Control Risks “registered a 30 per cent increase in piracy incidents and armed robberies at sea in the Gulf of Guinea. Criminal groups continue to expand their operational area south of Nigeria”⁸.

We can conclude henceforth, that the campaign of the Nigerian federal army against Boko Haram’s ground operations forced its fighters to take their weaponry and their terror tactics outside state boundaries into Cameroon and Chad, and to point out that illegal bunkering in the Niger Delta pushed crime gangs outwards into the territorial waters and even further into the Gulf of Benin. Such a translation may bring a slight advantage in combating criminal groups. Once they operate outside the 12 miles limit of the Nigerian territorial waters, the area may be policed by an international task force, as it happened in the Gulf of Aden. Such an operation could, at least, deter attacks to move outside state boundaries, with the corresponding loss of illicit gains designed to fund terrorist operations inside Nigeria. Tom Peterson, head of the Control Risk’s maritime Risks Analysis Department stated that “The centre of maritime piracy has been shifting west for a number of years, and the decline in activity off east Africa in 2003 has seen the Gulf of Guinea emerge as the gold hotspot for maritime crime”⁹.

What has become a major challenge at local and at regional level, is disorder at sea, the basic framework both for piracy and terrorist activities. “Insurgents and terrorists grab the opportunity to pursue their activities largely unmolested by law enforcement”¹⁰. Such a statement brings in the question not only of “how?”, but also of “where?” Again, two areas pop up as possible stages of such dramatic developments, areas marked by a fragmented state like Nigeria, torn between the Christian, oil-rich south, and the Islamist, poorer north. Such a divide could be just a superficial conflict. What lies deeper than that is the lack of will and power of the federal authority to fight the crime machine, which has been circulating huge

⁶www.independent.co.uk/environment/oceans-need-their-own-seat-on-the-united-nations-says-royal-navy-expert-10302155.html, accessed 26 June 2015.

⁷<http://www.dailymail.co.uk/news/article-3021104/UN-rights-chief-chief-Boko-Haram-fighters-murdered-captive-women.htm#xxz23W8KkiNGV>, accessed 24 June 2015.

⁸ *Piracy, Terrorism and Diverse Maritime Threats...*

⁹ *Piracy, Terrorism and Diverse Maritime Threats...*

¹⁰ Martin Murphy, *Contemporary Piracy and maritime Terrorism. The Threat to International Security*, Adelphy Paper 358, Routledge, New York, 2010, p. 10.

amounts of black money among warlords, politicians and religious leaders¹¹. To challenge them would mean an all-out offensive against private armies like Boko Haram or the Niger Delta Defence Force. The Nigerian President, General Muhamadu Buhari pledged to stamp out insurgents, but words and promises alone could hardly deter militants from orchestrating attacks and manslaughter. “Further key factors such as port and anchorage crime, domestic instability and civil unrest, political violence, territorial disputes and migration can pose a similar level of reputational, operational and security risk for shipping and offshore oil and gas industry”¹².

In Somalia, maritime piracy provided better and better trained and battle hardened insurgents for terrorist groups like Al Shabaab. Although terrorists have not gone to sea yet, they can have new fighters from among former sea pirates. The latter have grown in the cult of armed violence after the fall of the Siad Barré regime in 1991. Light weaponry is easier to get than water or khat leaves in the area. There is no legal authority to impose law and order for a country dominated by tribes, clans and local warlords. That is why maritime piracy could breed terrorism so easily. A second trend is for terrorists to migrate from land onto the sea. Possible targets across the waves are mainly civilian and they include commercial ships, oil rigs, harbour facilities and also narrow naval passages like the Hormuz, Malacca, Gibraltar or Bosphorus straits. “Like terrorist lethality, the key factor that drives an organization to be more likely to conduct maritime attacks is the number of connections with other terrorist organizations. Knowledge and connections seem to be driving such attacks and thus underline the importance of capabilities over ideology related to such attacks”¹³. Even if terrorist groups mistrust pirates ideologically, they still may find the latter useful because they have built an underground industry circulating billions of dollars that may very well support Al Qaeda or Boko Haram. The marriage of the two branches of organized crime may lead to disastrous blows first to the world economy and second to regional stability and trade. One bleak scenario may put together terrorist ambitions to destroy the current world order, and the skills and daring of pirates knowledgeable enough to sink a huge tanker or cargo ship in order to block a major international waterway. Such a plan is not as far-fetched as it may seem. In 2014, Al Qaeda commanders ordered jihadists to blow up large ships passing through the Gibraltar to disrupt the oil bloodline linking the Middle East to Western Europe and North America¹⁴.

What segregates terrorism at sea from maritime piracy is actually not only the scope but also the vastness of the playfield. Moreover, “Piracy is predicated on financial gains, while terrorism is motivated by political goals beyond the immediate act of attacking a maritime target the former will eschew attention and aim to sustain their trade while the latter will court publicity and inflict as much damage as possible”¹⁵.

Terrorism migration has been directed recently two ways. One was the overspill effect of extremist groups operating in their own countries, which involved neighbours, as was the case of Nigerian parasite army spreading their raids of killing into Chad and Cameroon. Porous borders, a lax or inefficient frontier patrolling system allowed paramilitary gangs to swing from one state into the other. West African countries experienced their own internal

¹¹ See John Campbell, *Nigeria. Dancing on the Brink*, Rowman and Littlefield Publisher, Lanham MD, 2011

¹² *Piracy, Terrorism and Diverse Maritime Threats*, op.cit.

¹³ piracy-studies.org/terror-at-sea-exploring-maritime-targeting-by-terrorist-organizations, accessed 18 September 2014.

¹⁴ Jennifer Smith, “Terrorists plan to blow up oil tankers and highjack cargo ships passing through Gibraltar to wreak havoc on global economy”, www.dailymail.co.uk/news/article=2808633/Terrorists-plan-blow-oil-tankers-highjack-cargo-ships-passing-Gibraltar-wreak-havoc-global-economy.html, accessed 2 May 2015.

¹⁵ Adam Young and Mark Valencia, “Piracy and Terrorism Threats Overlap”, *The Washington Times*, July 7, 2003.

insurgencies and did not muster enough military might to contain and reject alien brigands. Al Shabaab tortured small communities in Somalia and killed 147 people in the Kenyan Garissa University in early April 2015. According to the Kenyan media quoted by international publications, “The suicide vest-clad gunmen, whom the Somali terror group Al Shabaab claimed as their own, told students they «were here to make your Easter holidays better» and warned of further attacks”¹⁶.

A definite convergence between sea piracy and maritime terrorism has not been cemented so far, according to even the most pessimistic surveys, but the danger looms in the dark. The interests of the two kinds of criminals still collide head-on. While pirates’ perpetual aim is to keep the international shipping machine grinding in order to have their pick of targets, terrorists envisage precisely a disruption of the maritime traffic to cause economic disaster, distrust in national governments and armies and a loss of face of the democratic societies. True enough, both pirates and terrorists are very deft in carrying out armed attacks mainly against civilians. Pirates use their guns to hijack commercial vessels. Once they are on board, they keep the hostages alive to make sure the ransom money will come. Terrorists unleash a more sophisticated arsenal to kill as many people as possible, to destroy historic landmarks, to generate public fear and panic with a total disregard for human lives.

One basic difference prevails, and, paradoxically, may lead to closer contacts between pirates and terrorists. The former are experts in sailing. They are also better and more experienced attackers travelling in speedboats across the waves. The latter are trained fighters able to plan well in advance their operations; they are indoctrinated to act in unity on the ground to kill without mercy and to impose their extremist order. Most terrorists come from instruction camps supervised by former military advisers left unemployed after the conflicts in Bosnia, Angola, Kosovo, Sierra Leone or the Democratic Congo. Terrorists’ fighting abilities are still deadlier than those of the pirates, a conclusion validated by ISIS’ whirlwind campaign and the aggressiveness of Al Shabaab in eastern Africa. Initially its leaders condemned sea-piracy and focused on winning the hearts and minds of the rural population claiming that the 2010 rich crop had been the fortunate outcome of their control in the grain-production areas of central and south Somalia. Dwindling funds pushed Al Shabaab leaders to approach pirate gangs after 2011. Peter Chalk explained the terrorists’ presumed shift of focus “to water-based activities through five factors:

- vulnerabilities that have encouraged a higher rate of pirate attacks also apply to terrorism;
- A growth in maritime sports and equipment provided terrorists with readily accessible training and resources to operate at sea;
- Maritime attacks offer terrorists an alternate means of causing mass economic destabilization;
- Sea-based terrorism constitutes a further means of influencing mass coercive punishment on enemy audiences;
- The expensive global container-shipping complex offers terrorists a viable logistic conduit for facilitating the covert movement of weapons and personnel”¹⁷.

A fellowship of sea criminals and Islamist die-hards worked around the African coasts for quite some time. No less than 98 hundred attacks committed by some or the others happened in the last forty years. An irreversible marriage of the two violence-prone groups

¹⁶ Aislinn Laing, Mike Pflanz, “Kenya university attack: They were lined and executed”, www.telegraph.co.uk/news/worldnews/africaandindian_ocean/kenya/11514500/Kenya-university-attack-They-were-lined-up-and-executed.html, accessed 5 May 2015.

¹⁷ Peter Chalk, *The Maritime Dimension of International Security*, RAND Corporation, Santa Monica CA, 2008, p. XIII.

lies down the road so far. However, a firmer attitude and a more comprehensive international strategy to contain and finally to annihilate them through freezing their assets, through monitoring and restricting their freedom of movement and through obliterating their recruiting campaigns may jumpstart a handshake with the devil in order to make them both cross a threatening precipice cracking under the militants' and the pirates' feet.

What have prevented a real union between pirates and terrorists until recently were equally their incomplete similarities and their disdainful differences. They both share legal and jurisdictional weaknesses and a potential for ransom. Nevertheless, geography plays different roles in each case. While piracy peaked in underprivileged areas confused by a feeble law-enforcement presence, terrorism cultivated local and even international support in regions with tight tribal and communal control. Where piracy enjoyed the cultural acceptability of local warlords, terrorists leaders associated themselves to stronger networks as was the case of Al Shabaab, which placed its authority under the Al Qaeda umbrella. Soon enough, after such an allegiance, the Somali Islamists expanded their attacks in neighbouring Kenya to the south and into the ever-lasting enemy's territory of Ethiopia, to the north-west. Such an expansion of its attacks west was not merely a revenge for Somalia's defeat in the Ogaden war, but rather a sort of punishment for the libertine society tolerated by Addis Ababa and for its relaxed attitude towards the local Christians, the oldest such community in Africa.

Territorial conflicts and ground battles are very visible and local or international media feed radiantly on them, especially if they are very brutal. Wars at sea have always been surrounded by mystery and uncertainty for the general public. A merge between piracy and terrorism, if it ever happens, is going to be obscured by actual circumstances. What has become more and more obvious is the necessity to defend the high seas from becoming a favourite operation theatre for terrorists. The British admiral Sir James Burnell-Nugent suggested that oceans must have their own seat in the United Nations. Their representative may attend Security Council meetings whenever matters connected to seafaring are discussed. The former Fleet Commander-in-Chief of the Royal navy suggested that "An experienced diplomat with a team of support stuff could fulfill the UN role"¹⁸. He argued that "It is important that international waters do remain international waters"¹⁹.

Before such an idea is actually implemented, the danger of a piracy-sea terrorism association still floats in the air. True enough, only 2 per cent of terrorist attacks happened at sea. The overwhelming such instances were ground-planned and they claimed terrestrial targets. The pressure put on them both by the international campaigns against terrorist acts and by the huge presence of national military navy vessels in the most sensitive passages may have deterred an upsurge of violent attacks. Communication technology, easy access to more and more sophisticated weaponry and fast boats as well as improved fighting skills of pirates and terrorists may cause sleepless nights to security, intelligence and defence managers and decision makers.

Romania faces three major threats coming from the Black Sea and its 275 kilometres long coast. The most challenging, from a military point of view is the Russian attitude towards Romania's NATO membership and its commitment to defend the Alliance's eastern border. The Kremlin politicians have constantly objected to Romania's participation in NATO's ballistic missile defence and its joint naval exercises in the company of American battleships in the Black Sea. Russians argue that the US are setting up a permanent advanced naval task force, although its vessels come on a rotating basis.

¹⁸www.independent.co.uk, as quoted above.

¹⁹www.independent.co.uk,

Tensions reached their peak when the Bucharest government condemned Crimea's annexation by the Russian Federation. The US policy of leading from behind in Eastern Europe irritated Moscow even further, but things did not go beyond an exchange of statements and words.

A second danger looms over the waves and that is posed by a possible major terrorist attack in the Bosphorus strait. If a large commercial vessel is intentionally shipwrecked or sank by an explosion in the sailing channel, not wider than a mile in certain areas, the Romanian exports industry outside Europe is deprived of a major cheap venue for transferring goods to Africa, the Middle East and South-east Asia. Such a chilling perspective gives also nightmares to Bulgarians, to Turks and even to Russians who might see their access to the Mediterranean cut off for some time.

The third threat comes not from the Black Sea in particular, but from the Mediterranean. The apparent solidarity that Brussels strives to stage in the case of African migrants sailing towards the European shores can very well be labeled as a charitable and sympathetic approach to a major human tragedy. Unfortunately, the migrants' wave crushing against the northern shores of *mare nostrum* is not a European Union outright responsibility, as outrageous as it may sound. Those desperate people ending up on Lampedusa island, on the French and the Italian coasts come for a better life preached by their former colonial masters. Therefore, it should be Britain, France, Belgium, Portugal, Spain, Germany and Italy, which have to attend the matter as these countries enjoyed the spoils of the colonial rule for decades and even centuries. A time has come to pay back for those privileges and goods and it is only fair for those governments to assume their responsibilities as they did when the Commonwealth, La Francophonie and other postcolonial adjustments preserved some privileges for yesteryear's masters. In the long run, it is a matter of direct connections between the former powers and the territories they dominated and controlled until fifty years ago. It is not a concern of the EU or of its members like Romania, Estonia or Hungary.

There is slightly any reason for Romania to take in some 1,700 homeless Africans and other 700 asylum seekers from the same area. For 6,000 Euros each, the country is supposed to shelter, feed, educate, and provide medical assistance to the newcomers for no reason at all. Moreover, Romania has done its share in assisting the new African countries until the early 1990's by training 60,000 African students to become doctors, engineers, economists on the Romanian taxpayers' money in Romanian universities. No gains were involved, just a wide humanitarian understanding of solidarity among the poor and the poorer.

In the case of the migrants' take-over compulsory ratio, the project initiators did not set a timetable for negotiations with countries of origin for the return and reacceptance of those temporarily hosted by Romania and others. Besides, serious negotiations are most unlikely to produce acceptable results in the case of South Sudan, Central Africa, Somalia, the Democratic Congo or Nigeria, countries facing overwhelming domestic problems, which cannot be solved in the two-years suggested period advanced as bumper respite as a provisional shelter granted to their citizens by EU member countries. Even more aggravating is the unpredictable identity, convictions and allegiance of the African newcomers. Some migrated from Muslim dominated areas, some may very well be jihadists infiltrating into Europe to perpetrate their criminal acts. Romanian intelligence services already have a hard time to monitor Muslim expats who have set up business and camp in the country. In early May 2015, the Bucharest Court of Appeal expelled two Arab university undergraduates who preached the ideology of the terrorist group Daesh—the Islamic State²⁰. Earlier on, another

²⁰ www.libertatea.ro/detalii/articol/Jihadistii-isis-expulzati-din-romania-539856.html, accessed 14 June 2015.

seven Muslim businessmen were declared persona non grata and had to leave the country because of their propaganda supporting ISIS and its fighters²¹.

The new national defence strategy approaches the threats of terrorism in general terms. The day-to-day protection of Romanians and the country's national interests and identity demands more than that. Romania has proved throughout difficult times that it has the will and the power to preserve its sovereignty and to protect its civilian population in a conjoined effort with its allies that have stated their staunch commitment to all NATO members' security and stability.

²¹ www.libertatea.ro/detalii/articol/Jihadistii-isis-expulzati-din-romania-539856.html

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CAUSES AND EFFECTS OF THE MIDDLE EAST WAR ON EUROPEAN POPULATION. REFUGEES CRISIS – RISK OR OPPORTUNITY?

Andreea Florentina NICOLESCU¹

ABSTRACT

IN THE CONTEXT IN WHICH EUROPEAN UNION IS CONFRONTING WITH A BIG ISSUE OF HANDLING THE SO-CALLED REFUGEES CRISIS, THIS ARTICLE IS MEANT TO UNRAVEL THE REASONS BEHIND THE RELEASE OF THIS SITUATION WITH WHICH EU DIDN'T CONFRONT UNTIL THE BEGINNING OF HUMANITARIAN CRISIS FROM 2015. THE IMPORTANCE OF STUDYING THIS SUBJECT IS GIVEN BY THE NECESSITY OF KNOWING THE CAUSES WHICH LED TO GENERATING A HUMANITARIAN CRISIS OF AMPLENESS, THE EFFECTS GENERATED BY REFUGEES FOR THE HOST STATES TAKING INTO CONSIDERATION THE ACTUAL SITUATION OF THE EUROPEAN POPULATION.

THE MAIN OBJECTIVE OF THIS ARTICLE IS TO IDENTIFY THE MAIN CAUSES OF TRIGGERING THE REFUGEES CRISIS AND THE EFFECTS OVER THE STATES OF PROVENANCE FOR THE REQUESTORS OF HUMANITARIAN PROTECTION.

THIS THING IS REALIZED BY MENTIONING THE GEOPOLITICAL SITUATION OF THE MAIN STATES WHERE THE ASYLUM SEEKERS COME FROM THAT ARRIVE IN THE MEMBER STATES OF EU AND BY MAKING AN ANALYSIS THAT WOULD SPECIFY THE DISASTROUS EFFECTS OF THE MIDDLE EAST WAR. TAKING INTO CONSIDERATION THAT EUROPE IS CONFRONTING WITH THE PROBLEM OF AGING POPULATION, IT IS NORMAL TO ASK THE FOLLOWING QUESTION IN THE RESEARCH: "DOES THE REFUGEES CRISIS INTENSELY MANIFESTED IN EUROPE REPRESENT AN EFFICIENT SOLUTION IN COMBATING THE NEGATIVE EFFECTS OF EUROPEAN POPULATION AGING?". SO, IN THE SECOND PART OF THIS ARTICLE IT IS EMPHASIZED THE SITUATION OF EUROPE FROM DEMOGRAPHIC AGING POINT OF VIEW AS WELL AS THE AGE OF THE REFUGEES THAT RECEIVED POLITICAL ASYLUM IN THE EUROPEAN COUNTRIES.

KEY WORDS: REFUGEES, GEOPOLITICAL THREATS, DEMOGRAPHIC AGING

INTRODUCTION

The importance of this subject is explained through the identification of the reasons which triggered the crisis of refugees, of the conflict situation from Middle East and of the effects that result from this. We must keep in mind that host states of the refugees, countries that are part of EU, are confronting with the aging population phenomenon, this is why it is necessary to check the assumption which refers to the possibility that the presence of refugees in Europe will stop the aging of population.

¹ Andreea Florentina NICOLESCU is Ph.D Student at The Bucharest University of Economic Studies, Romania, e-mail: andreea_nicolescu93@yahoo.com

The article is structured in two parts, so, in the first part of the article it is presented the situation of the origin states, more precise, there is realized a qualitative analysis over the reasons that led to population flee from Middle East in Europe, a continent that is more secure compared with the situation in Syria, Iraq or Afghanistan. In the analysis, there is a focus on the situation in Syria, taking into consideration that the most of the asylum seekers in EU are from there, so there are analyzed the reasons that led to the Syrian war.

In the second part of the research, it begins from the idea that Europe has an issue regarding the sharpening of the phenomenon of population aging, this is why it is analyzed the percent of population over 60 years in order to understand the situation in which Europe currently is from this perspective. On the other side, it is analyzed the situation of the refugees on age intervals to identify the ones that could help stopping this phenomenon.

1. GEOPOLITICAL THREATS FROM THE ORIGIN STATES OF THE REFUGEES IN THE CONTEXT OF HUMANITARIAN CRISIS BURST FROM MENA AREA

This analysis is meant to identify the threats present in the states where refugees come from, in the context in which these states show an unstable geopolitical frame which is going to be brought in the followings.

In order to be able to make this study, I used as main method of research the documents analysis, among these being found researches done by the experts as well as official documents made available by EU institutions, which have an active role in handling the refugees crisis on European continent. Another aspect regarding the used methodology was making a comparison to highlight the existing differences regarding the reasons that caused the conflicts which formed a crisis with humanitarian impact among states in MENA area, this being the acronym used for Middle East and North Africa.

Considering the position of MENA region, which is between the three continents, Europe, Asia and Africa and the valuable resources in the area, remarking in this way the big gas and oil resources, that pointed to strong conflicts between the great powers that have as goal obtaining this territories, no matter what.

The creation of Israel, which is a jewish state, in the middle of the arab and muslim states from MENA region contributed to numerous conflicts in the area, this being a cause of the area instability. Other causes of generating refugees crisis are: increasing terrorism in the area, especially by increasing the power of ISIS terrorist group, the US intervention in Iraq in 2003, the Israel-Palestine conflict as well as "The Arabic Spring" caused the propagation of war in the entire region, producing numerous wars, among these having the Civil War from Libya as well as Iraq. All these conflicts activated the refugee flee of numerous groups, especially in Europe, but the heavy war from Syria represents, by now, the one with the biggest impact over peace and stability from MENA area, this situation being the main cause of refugees flee.

Having the previously mentioned facts referring to the main reasons of the conflicts that produced the refugees crisis, the purpose of the study is to bring more details to the causes that led the creation of a region with high instability that had negative effects over the safety of the citizens in these states.

1.1. SYRIA WAR AS MAIN FACTOR FOR TRIGGERING THE REFUGEES CRISIS IN EUROPE. CAUSES AND EFFECTS OF THE SYRIAN WAR BREAK OUT OVER THE ORIGIN STATES OF REFUGEES

Syrian Arabian Republic, officially known in the short form of Syria, it is a state that makes part of the antiquity civilization center of Middle East. Its main cities are: Alep, which

suffered multiple effects of the war in this state, Homs, Hama and Damasc, the last one being the capital of Syria. The president of the state is Bashar Al-Assad, which was elected in 2000, being the successor of his father, Hafez Al-Assad, which was president of the Syrian state since 1970.²

In what follows, I will present the main causes of war bursting in Syria in order to better understand what produced the refugees crisis. Among the reasons that contributed to the war in Syria, we can enumerate the following:

- *Dissatisfaction regarding the long period of government of Al-Assad family and the discontent among the authoritarianism of the Syrians*

The differences between the ways of governing Syria were very big, comparing father with son, since Hafez Al-Assad was the one which, while he led for 30 years, assured the stability in his country, making a strong bond with Iran and Russian Social Soviet Union. The policy on which Hafez Al-Assad bet was pro Palestine, on the other side, it had anti-occidental and anti-Israel influences. The president of Syria from that period was very quiet, not being closed to the citizens of his state or, comparing with Bashar Al-Assad, the son who governed after the death of his father and his brother, who died in 1994 due to a car accident. After becoming president, the relations of Syria with the Occident improved, especially considering that the new Syrian president had an education partially founded in London, where he continued his studies in ophthalmology, initiated in Damascus.³

- *The actions of Syrians authorities against the protesters and their effects on worsening the conflict*

The conflictual situation in Syria started in 2011, in Daraa city, after an incident that ended with the torture of some young people, because they were writing revolutionary messages on the walls of a school, in contrariety with the government actions. After this incident, there were manifestations of the population for the way in which the security forces acted and hurt those young men, the protesters asking for the resignation of the Syrian president. This situation got worse when the allies of the opposition of Bashar Al-Assad used weapons to defend themselves and, after, to eliminate the security forces in those areas.⁴

Unfortunately, the situation become even worse after the protest, becoming a civil war between the sustainers of Bashar Al-Assad and his opponents, even more that the power of Islamic State grew up and developed an extra dimension over the war in Syria.

- *The sectarian war between Shiites and Sunni, an old religious division contributes to augmentation of the civil war in Syria*

The fight between the two forces led to simulating violence which affected Iraq and amplified the existing tensions in Gulf countries. During centuries, the two sects lived together, marriages between those two being happening very often or the fact that these were praying at the same mosques, having similar prayers but what differentiates them are the rituals and the way of interpreting the Islamic law. The majority are Sunni, around 85%, the rest of 15% are Shiites. The separation of the 2 sects has old roots, appeared after the death of Muhammad and what led to a conflict between the sects was the debate of succession. Sunni oppose that political succession realizes on blood line of Muhammad, considering that is more important naming a leader based on reasons of qualifications while Shiites insist to accept a single leader that must be a person on the blood line of Muhammad. Currently, the Shiites can be found mostly in Iraq, Iran, Lebanon, Azerbaijan and Bahrain while Sunni are majority in over 40 states, among which are Morocco and Indonesia. The regime of president Bashar Al-Assad has at its base Alawis, which is a heterodox sect from Shia and which

² Relații bilaterale, Republica Arabă Siriană, accessed May 5, 2017, <https://www.mae.ro/bilateral-relations/5054>

³ VP Haran, "Roots Of The Syrian Crisis", Institute of Peace and Conflict Studies, March 2016

⁴ Elizabeth O'Bagy, "Syrian's Political Opposition", Institute for the Study of War, April 2012

represents 13% of population from Syria. This is the sect that dominates the military and security services of the country run by Al-Assad, being the one which help the forces that fight to support the regime of Bashar Al-Assad from the civil war in Syria.⁵

1.2. CAUSES AND EFFECTS OF CREATING “THE ARABIC SPRING” AND ITS INFLUENCE IN THE WAR IN SYRIA

The set of protests made in North Africa and Middle East which started in December 2010 and lasted until the first months of 2011 were called “The Arabic Spring”. These manifestations took place in Tunisia, Egypt, Yemen, Syria and other states.

The causes that generated this set of protests are multiple:⁶

- The economic factors that are related to poorness and high level of unemployment, aspects that led to amplification of frustration level for citizens from Middle East and North Africa, these people claiming that there aren’t taken any measures to reduce the unemployment, especially the one among the young people. So, poorness was one of the reasons that contributed to protests in different states.
- Repressive authoritative regimes had an impact over the Middle East and caused numerous protests. Thus, the fact that the leaders Ben Ali from Tunisia, Mubarak from Egypt, Gadhafi from Libya, Al-Assad from Syria and Abdullah Saleh from Yemen tried to limit the power of any opposition contributed to human rights violation in many occasions, fact that dissatisfied the population of these states which wanted to cease the political power of their leaders.
- The relationship between the army and the civil society had also an effect over the protests so called “The Arabic Spring”, so, in the states in which the interests of the military leaders were compatible with the encouragement of the military regime drove to the fight for government take down; a such case if the one of Libya and, currently, Syria.
- The corruption from the states where the protests took place represented one of their causes. In this way, political regimes from these states were seen by the citizens as being tainted by corruption by obtaining some very big family fortunes by their leaders.
- A big role in “The Arabic Spring” was held also by traditional media but also social, who helped by broadcasting and promoting political messages or some details regarding the protests establishment which allowed their spread among population which became more and more attracted to participate at these demonstrations.

2. REFUGEES USED AS INSTRUMENT TO COPE WITH THE EUROPE POPULATION AGING PHENOMENON

This chapter has the role to establish if refugees that arrive on European territory can help to combat the population aging phenomenon. EU member states are concerned about the population aging aspect which will increase in the future based on life expectancy growth level.

This fact, together with global natality rate decreasing to 1.5 children born by each woman contributes to reduction of the active population proportion in Europe, which brings the necessity to attract immigrants with a high qualification level and which has the corresponding age to work. Considering the fact that the population aging aspect, also called “the demographic winter” varies as intensity in European countries, it is necessary to have a different approach of migration politics which are able to fit with the specific dynamics of that population. Even though migration can’t be a decisive solution at the demographic

⁵ Council on Foreign Relations, “The Sunni-Shia Divide a CFR InfoGuide Presentation”

⁶ International Relations, “The Arab Spring”, accessed May 10, 2017, <http://internationalrelations.org/the-arab-spring/>

problems with which Europe confronts, the anticipative policies could improve the situation. In this way, to benefit from the present migration influx, the European countries which benefit from the refugees presence on their territory should create long-term strategies that include refugees integration on market labor.⁷

Europe has an aged population, this things is revealed also by the fact that, globally, 27 out 30 states with the highest percentage of people of 65 years old and over are from here. Among these we can enumerate Italy, Greece, Germany, Portugal, Finland and Bulgaria, where around 20% of the population is 65 and over. On long term, the refugees influx could be a benefit because the number of younger workers necessary on European market labor could improve, refugees having the potential to stimulate innovation and to bring ideas and new perspectives.⁸

To realize this first part of the research, I used data published by Eurostat concerning the percentage of population from EU which is enclosed in the age interval 60-79 years and 80-80+ between 2007-2016. I chose these dates to perform the analysis in order to show the high level of aged people from EU28 that brings to necessity of creating some policies meant to reduce the negative effects of European population aging process

I start from doing the analysis regarding the population of Europe, where we can notice in figure 2.1 the fact that aging population aspect at EU has recorded an increasing trend starting with 2007 until 2016, event that can be identified at both age levels. In this way we can observe that in the first year that has been analyzed, 18% of the total population of EU had the age between 60 and 79 years.

Aging population process in Europe sharpened in the evaluated cycle, people in this age interval reaching 19.9% of the total number in EU. A worrying aspect is the one that the proportion of the ones who fit 60-79 age group interval continually increased during all studied period, no year from the interval being an exception of this trend. This thing shows us very clear the fact that community from EU indicates an sharpen aging process.

Another aspect which confirms those mentioned above can be noticed in the case of 80 and 80+ people. The rate of those in this category continuously increased in the studied time period, with the exception of 2014, when the value remained the same with the one from the previous year.

Although we can see an evident difference between the percentage of the population between 60 and 79 years and those of 80 and over, we can notice a common aspect, the one that in the referenced time interval there was no decreasing moment of the aged community, the trend being only ascendant.

If we analyze the rate of population of 80 and 80+, we can observe the fact that in 2007, the people percent of EU that was included in this interval was 4.3%, in comparison with year 2017 when it reached 5.4%.

Previously quoted aspects in the analysis show us the fact that higher and higher rates of EU community is in the category of aged persons, element that gets to an intense aging European population. On this line, I consider that there should be made sustainment and encouragement policies for natality increase to have as result reducing the aging population phenomenon.

No variable can reverse the Europeans aging process, and without the international migration, the demographic situation would be even worse. A scenario of European Commission regarding the population of the 28 members of EU claims the fact that without net international migration contribution, European population could reduce with more than

⁷ Council of Europe, Parliamentary Assembly, "The impact of European population dynamics on migration policies", May 22, 2015

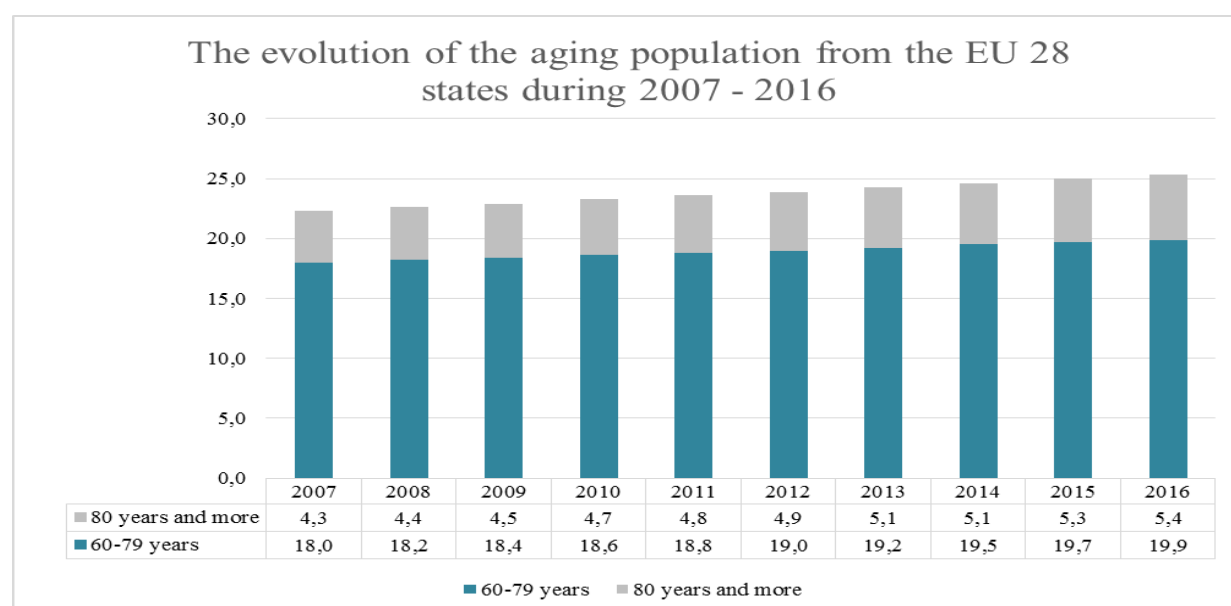
⁸ Drew DeSilver, "Refugee surge brings youth to an aging Europe", Pew Research Center, October 8, 2015

20% by 2080. Thus, refugees could help EU to decrease the challenges linked to demographic aging process, and to lead to economical growth according to present demographical tendencies, Europe should accept a big number of refugees. However, the demographical disproportion is high and in this case, migration won't be enough to solve this situation. In this way, Europe should improve competitiveness and human resource productivity taking into consideration the changes and labor market necessities in the future.⁹

The proportion of people of 65 years and more from Central Europe and Baltic countries grew with more than a third between 1990 and 2010 and population aging in this case is caused also by young people immigration and fertility decrease rate. Some examples where population dramatically decreased are: Croatia, where population reduced with 10% from 1990, Romania and Hungary, where population diminished with more than 5%. The problem of migration politics won't be the one of accepting or not refugees but more how the way the refugees crisis should be transformed into an opportunity.¹⁰

Whereas I identified the situation of European Union at the level of average of population percentage which matches in the 2 age intervals, 60-79 and 80-80+, I consider that is necessary to analyze the number of persons which obtained humanitarian protection in 2015 on age categories to be able to motivate the way in which refugees who arrived to humanitarian crisis initiation in European countries will be able to reduce the aging process in Europe.

Figure 2.1 Evolution of aging population from the EU28 member states from 2007 to 2016 as a percentage of the total population



Source: own representation using Eurostat database

In order to perform this analysis, I used the data provided by Eurostat, selecting 7 states that granted the refugee status for a big number of persons. Thus, from figure 2.2 we can see that in all evaluated countries, in 2015, most of the requests that have been accepted were the ones for the persons with the age between 18 and 34 years. The biggest number of

⁹ European Investment Bank, "Migration and the EU, Challenges, opportunities, the role of EIB", March 2016

¹⁰ Christian Bodewig, "Is the refugee crisis an opportunity for an aging Europe?", Brookings, September 21, 2015

these persons was of 3.705 refugees, accepted in Germany, which belong in the age interval mentioned above. The next country in these standings is France, who accepted on its territory 1.385 persons with the age in 18-34 interval.

The fact that in all investigated states the most accepted refugees are young people with the age between 18 and 34 which are able to work from the age point of view, suggests the evidence that these can bring numerous benefits to European population. An example in this case it is represented by the fact that they can get hired, generating money for the states that received them and they can spare them of the load of sustaining them as socially assisted persons, as well as stopping the phenomenon of European population aging.

Another argument to confirm the ones mentioned above is the fact the persons who received asylum in EU countries studied in 2015, with the age over 65 years are very few, the most cases are recorded in Germany (95 cases) and United Kingdom (90 cases).

According to table 2.1, Greece, which accepted 1.385 persons within 18 and 34 years was the one who didn't record any case of persons of 65 years or over.

Table 2.1 People who received asylum in 2015 according to the age group in selected EU member states

Selected EU member states	People who received asylum in 2015 according to the age group				
	less than 14 years	14-17 years	18-34 years	35-64 years	65 years or over
Germany	1405	375	3705	1725	95
Greece	105	65	1385	285	0
France	110	30	3530	1660	55
Netherlands	115	40	280	155	5
Austria	425	130	1660	460	30
Sweden	580	335	895	555	45
United Kingdom	915	5	2245	1110	90

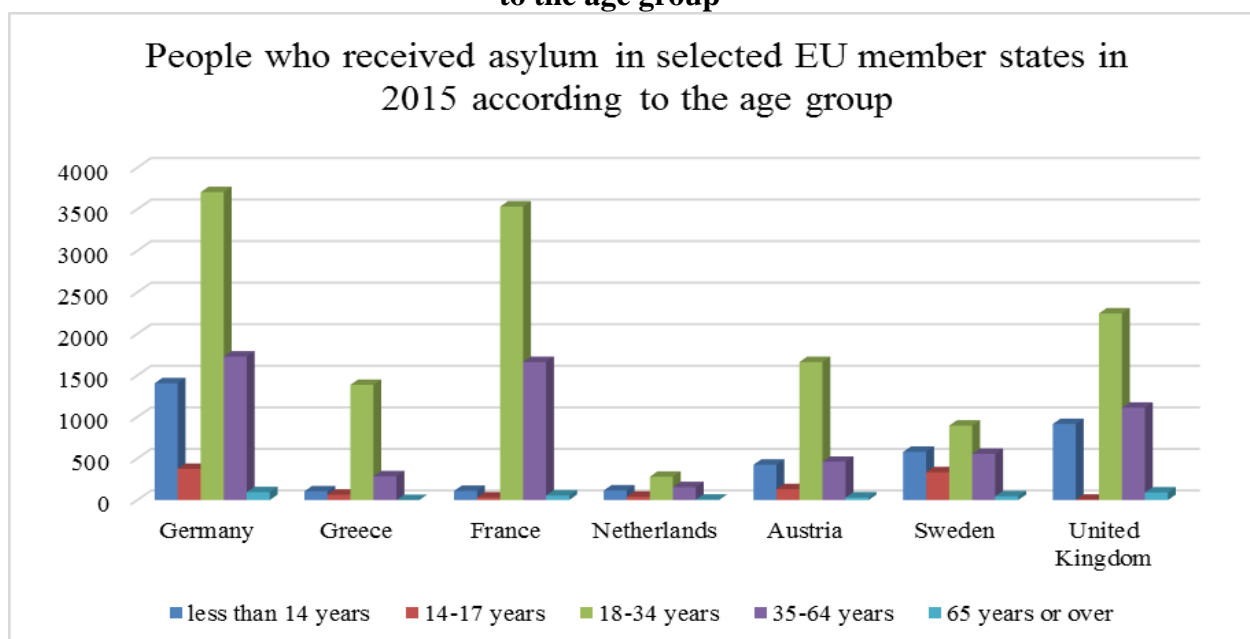
Source: own representation using Eurostat database

Those who will contribute for sure at Europe's countries GDP and will reduce the aging population aspect are the ones who fit in the group with the ages in the 35-64 interval, which are good for work and have an age that allows them to do it. The biggest part of these are in Germany (1.725 refugees), France (1.660 refugees) and Great Britain (1.110 refugees).

The investigated countries indicate a minor number of minor persons, which could improve the natality in the host countries in the future. The majority of these can be found in Germany (1.495 persons), Great Britain (915 persons) and Sweden (580 persons).

Also, there is similar situation for those with the age between 14 and 17 years, which can support at reducing the event of aging population from European states. The most advantaged country from this point of view is Germany, which, in this case too, accepted the biggest number of refugees aged between 14-17, more precisely 375 persons. The state that follows Germany in this rank is Sweden, who offered the refugee status for 335 people between 14 and 17 years.

Figure 2.2 People who received asylum in selected EU member states in 2015 according to the age group



Source: own representation using Eurostat database

We can notice from figure 2.3 that most of the refugees accepted in European countries that have been selected for this inquiry are included in the age interval of 18-34 years.

In 2016, Germany is again the state with the biggest number of accepted refugees which are included in aisle of 18-34 years, this one having 5.890 people from this category and 2.430 from 35-64 years category.

Table 2.2 People who received asylum in 2016 according to the age group in selected EU member states

Selected EU member states	People who received asylum in 2016 according to the age group				
	less than 14 years	14-17 years	18-34 years	35-64 years	65 years or over
Germany	2310	580	5890	2430	95
Greece	280	120	4210	1210	10
France	205	30	4135	2000	50
Netherlands	180	60	455	305	15
Austria	285	80	740	270	10
Sweden	645	685	1345	730	55
United Kingdom	1160	10	3815	1390	95

Source: own representation using Eurostat database

An aspect that can be identified in 2016 and it different from the previous year is the one of Greece, which recorded in 2016 with 2.825 more refugees than in 2015 regarding the 18-34 age interval, being on the third place regarding this rank.

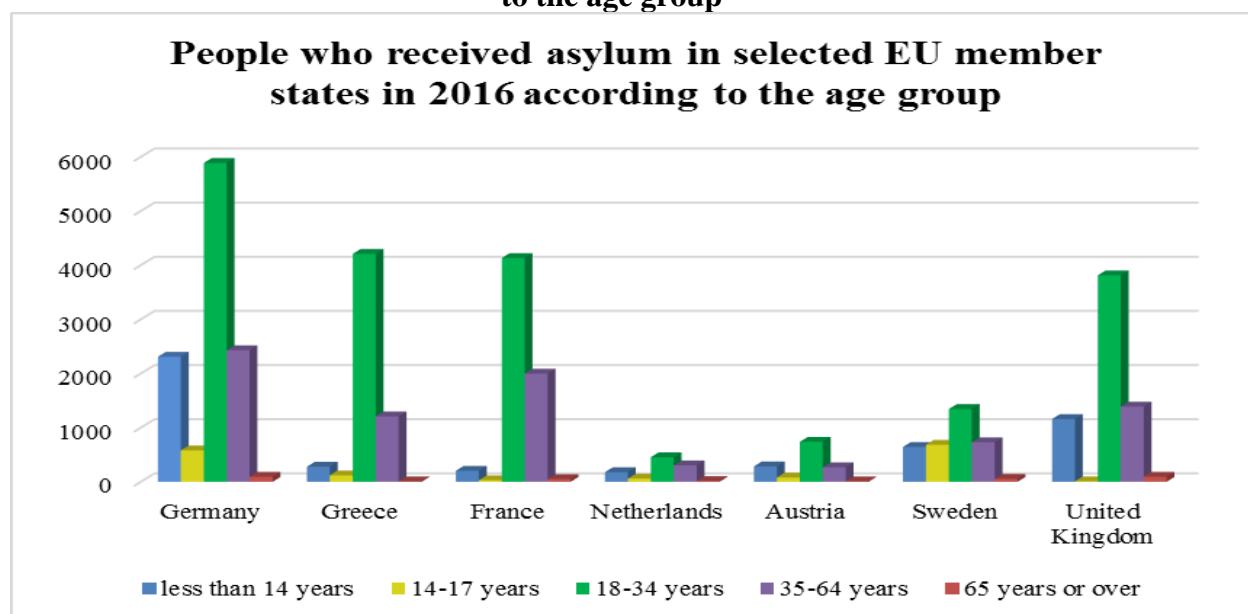
Again, for Greece, we notice that fact that the number of refugees accepted on its islands grew in 2016 compared to 2015 regarding the people with the age between 35-64, reaching to 1.210 refugees in 2016 that could help the aging process there.

In the case of minors, we can identify in table 2.2 that most of this class refugees that were accepted or received the refugee status, from category 14-17 years were recorded in Sweden (685 refugees). A very smaller difference occurs in the situation of those who are below 14 and received humanitarian protection from Sweden, this country receiving on its territory 645 minors with the age below 14.

If we confront the states that received refugees with the age under 14, we can notice that the state with most of these belonging to this category is Germany (2310 people), being followed by Great Britain (1.160 people).

In 2016 too, the number of refugees accepted in the selected European states, which are over 65 years old is smaller compared to the other age class, which represents the fact that this will not impact negatively the European population aging process.

Figure 2.3 People who received asylum in selected EU member states in 2016 according to the age group



Source: own representation using Eurostat database

A conclusion of the realized analyze for years 2015 and 2016 regarding the refugees age category which received the refugee status in the EU states is that Germany will benefit the most from the advantages of receiving this category of young refugees that can contribute to natality increase process but also to reducing the aging phenomenon. Germany received in the 2 studied years a total number of 18.420 refugees from the 1-64 age interval and only 190 refugees with the age of 65 years and more. This state is followed by France, who accepted 11.700 refugees from the 1-64 years class and only 105 refugees of 65 years and over.

Regarding the above mentioned, I consider that the accepted refugees by the investigated countries can help stopping the aging process, taking into consideration that most of those who came in Europe are young and the number of the ones over 65 is very small compared to the others.

CONCLUSIONS

The approached subject has a high importance because Europe confronts on one side with receiving a big number of refugees and on the other side with the intensification of the phenomenon of population aging.

As used methodology, I operated with documents analysis, among these finding researches made by the domain experts but also the official documents provided by the institutions of European Union, as well as the comparison method to emphasize the existing differences regarding the situation that caused the conflicts which led to the development of a crisis with humanitarian impact through the MENA states. In the same time, to perform the statistical analysis, I used data supplied by Eurostat, the institution that deals with European Commission statistic.

In the first phase, for the analysis regarding the evolution of the aging population process as average for EU28 level, I analyzed this phenomenon for period 2007 – 2016 to surprise the evolution of this process. Afterwards, I used the method of comparison to identify the differences between the persons who received asylum in some states selected from European Union (the selection criteria of these being the number refugees accepted on their territory) in 2015, respectively 2016, the reason of choosing these 2 years being that they reflect precisely the moment of triggering the refugees crisis, 2015, continuing with the crisis evolution in the next year. A subsequent inquiry can be established by introducing the data for the next years but, at the moment of the study only the analyzed data were available.

I was able to identify the war from Syria as being the main cause of the refugees crisis in Europe and between the reasons that led to the war in Syria we can enumerate: the objections regarding the long-term government of Al-Assad family and the dissatisfaction for authoritarianism of the Syrian citizens, the actions of Syrian authorities against the protesters as well as “The Arabic Spring”. Among the causes of the so-called “The Arabic Spring” protests we can reveal: economic factors regarding poorness and the high level of unemployment of population, repressive authoritarian regimes that influenced the Middle East and led to numerous protests, the relationship between the army and civil society as well as corruption.

In the second part of the study it is presented the evolution of the population aging process in EU countries in 2007-2016; after doing this analysis, we can say that bigger and bigger rate of the population in EU is in the category of persons with ages between 60 and 79 years and 80 and over, fact that sharpens the phenomenon of aging in Europe. In this way, I consider that there should be created policies of support and encouragement of natality increase in order to reduce the aging process.

The research presents an analysis of group ages intervals that received asylum in European states in 2015 and what results from this inquiry is the fact that all the studied countries the most accepted refugees are the young ones with the age between 18 and 34 that are good to work from the point of view of age, which suggests the fact that these can bring numerous benefits to European population. Those that will definitely contribute to European states GDP and will reduce the aging process are the ones that fit the age interval of 35-64 years, good to work and have an age that allows them to work. Most of these in the mentioned category in 2015 are in Germany, France and Great Britain.

In 2016 Germany remains the state with the most accepted refugees with the age between 18 and 34 and an aspect identified in 2016 which is different compared with the previous year is the one represented by Greece, ranked 3 in this top.

From the accomplished analysis we can state that the accepted refugees by the inquired states could contribute to stopping the aging phenomenon, taking into consideration

that most those who chose to come in Europe as refugees are young and the number of those over 65 years is very small compared to the first ones.

Although Europe is confronting with a process of aging population, it is possible that the acceptance of the refugees contributes to ceasing this event, keeping in mind that most of the people who require asylum in Europe are young people who could improve demographic tendencies in EU.

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EU-TURKEY NEGOTIATIONS IN THE CONTEXT OF SECURITIZING MIGRATION AFTER THE 2015 REFUGEE CRISIS: JOINT ACTION PLAN AND THE READMISSION AGREEMENT

Priscilla OLTEAN¹
Claudia Anamaria IOV²

ABSTRACT: *THE EUROPEAN UNION AND TURKEY HAVE ALWAYS HAD A SPECIAL RELATIONSHIP, TURKEY BEING A VERY IMPORTANT GEOSTRATEGIC PARTNER ON WHICH THE UNION'S SECURITY DEPENDS, FACT PROVEN ONCE AGAIN BY THE 2015 REFUGEE CRISIS. THE PRESENT PAPER AIMS TO EXPLORE THE NEW NEGOTIATION PHASE IN WHICH TURKEY AND THE EU ENTERED AFTER THE SECURITIZATION OF MIGRATION IN THE EUROPEAN UNION. THE PURPOSE IS THEREFORE TO IDENTIFY AND ANALYZE HOW MIGRATION AFFECTED AND CHANGED THE NEGOTIATION PROCESS AND WHAT WERE THE MOST IMPORTANT VARIABLES THAT SHAPED THE EU-TURKEY NEGOTIATIONS IN THE AFTERMATH OF THE 2015 REFUGEE CRISIS, THE OUTCOMES BEING THE JOINT ACTION PLAN AND THE READMISSION AGREEMENT. THE ANALYSIS WILL BE CONDUCTED USING THE STRATEGIC, CULTURAL, BEHAVIORAL, PROCESSUAL AND STRUCTURAL THEORETICAL APPROACHES, EACH OF THEM BEING IMPORTANT FOR FRAMING THE NEGOTIATION PROCESS.*

KEY WORDS: NEGOTIATION PROCESS, TURKEY, THE EUROPEAN UNION, REFUGEE CRISIS, MIGRATION SECURITIZATION.

INTRODUCTION

During the last years, due to the new international challenges – notably the refugee crisis and the evolution of MENA region after the Arab Spring – Turkey has become one of the most important strategic partners of the EU, a vital actor of whom depends the stability of the whole continent. As the Turkish Foreign Minister Mevlüt Çavuşoğlu declared, Turkey has “played an important role in Europe’s past and will do so in the future”³, emphasizing thus that the European and Turkish affairs are strictly interdependent and a close cooperation in many fields, especially in the field of migration, is imperative.

This paper aims to explore the EU-Turkey negotiation process in the context of securitizing migration after the 2015 refugee crisis, using as analytical tools five theoretical approaches, namely the structural, strategic, processual, behavioral and cultural ones. The main purpose of my research is to identify (1) *what are the main variables that shaped the*

¹ Priscilla Oltean, master student, 2nd year, Babeş-Bolyai University, Faculty of History and Philosophy, Leadership and communication in international organizations, e-mail: priscilla.oltean@yahoo.com.

² Claudia Anamaria Iov, dr. at Babeş-Bolyai University, Faculty of History and Philosophy, Department of International Studies and Contemporary History, e-mail: cladyayov@yahoo.com.

³ ***, *Turkey says EU ‘incomplete’ without it, eyes better US ties*, 2017.

negotiations and led to the final outcomes and (2) how the refugee crisis and the securitization of migration influenced the whole process. The paper is based on the hypothesis that the securitization⁴ of migration in the context of the 2015 refugee crisis had a substantial impact not only on opening negotiations for the Joint Action Plan and for the Readmission Agreement, but it also influenced the negotiation process itself, the balance of power, the cultural characteristics of actors, their behavior, as well as their plans and strategic objectives.

In order to achieve the above-mentioned objectives, both primary and secondary sources were used. As primary sources, we used statements and speeches, statistics, reports and documents issued by international institutions and organizations, such as the UNHCR, the International Organization for Migration or the European Union. The EU-Turkey Joint Action Plan and the Readmission Agreement drafts, together with the final agreements were also placed under analysis as primary sources. As secondary sources, various scientific papers and specialized books on the topic of international negotiations were used, but it should be highlighted however that, given the fact that the chosen subject is recent, there were no publications or analysis made on the EU-Turkey negotiations in the context of the 2015 refugee crisis. It should also be mentioned that, as a consequence, a wide variety of electronic sources, news and articles from international media trusts were exploited. Multiple research methods, such as descriptive and documentary analysis, case study, literature review, as well as comparative and historical analysis were combined, in order to reach the objectives of this paper and to outline the process as a whole.

1. CONTEXT

Briefly mentioning the historical context, it must be stated that the European countries and Turkey have had multiple interactions and developed thus a culture of negotiating one with the other. After Turkey became a full member of NATO in 1952, it also proceeded in '59 towards a close relationship with the European Economic Community, applying for associate membership. After numerous attempts of becoming a member, at the 1999 EU Summit in Helsinki, the EU leaders accepted the candidate status of Turkey⁵ and opened the accession talks in 2005⁶. Even though Turkey made significant efforts in order to respect the European standards and conditions, the accession negotiations had encountered a series of blockages, numerous chapters being frozen. In the present, there are 15 opened chapters (out of 35) and one which is provisionally closed⁷. The EU and Turkey also have a series of other important diplomatic agreements in different sectors, such as trade and economy, migration, energy or even joint EU-Turkey operations and missions. However, it must be stressed the fact that the EU-Turkey relations have always been difficult, characterized by ups and downs, by periods of intensive collaboration followed by a distant and non-cooperative phase, sometimes carried on until freezing all contacts.

After the refugee crisis has been triggered, an interesting process of re-securitization of migration took place in the European Union, the massive waves of immigrants transferring the migration issue from the *usual policy agenda* to the *panic policy agenda*⁸. More than 1

⁴ Process through with migration is perceived as an absolute priority or an existential threat, being transferred from the regular policy agenda to the emergency policy agenda (see Barry Buzan, *Security – a new framework for analysis*).

⁵ The Guardian, *Timeline: Turkey and the EU*, 2002.

⁶ *EU-Turkey relations*, 2012.

⁷ Ministry of EU Affairs, *Accession Negotiations*, 2016.

⁸ Priscilla Oltean, *Ways of Securitizing Migration in the European Union as a Result of the 2015 Refugee Crisis: Typology of Actors, Discourses and Effects*, 2016, 93.

million migrants⁹ arrived in 2015 in the European Union fleeing war and persecutions. They found the Union without a common policy on migration and thus without the possibility to coherently and efficiently manage the situation. Faced with a *fait accompli*, the political leaders have reacted in very different ways to the challenge raised by the refugee crisis – the European community was therefore divided between those who supported the granting of international protection to those in need, and those who rejected any pro-refugee measures¹⁰. The fact was that both parties perceived migration as an essential security issue, a priority, an emergency that had to be solved as quickly as possible. Given the lack of EU preparation (legally, institutionally, administratively etc.) and the destabilizing effect that migrants had in the EU, the leaders and the society felt a *high degree of threat*. The fear, the pressure of time and the necessity of finding ways out of the crisis, the complexity of the issue, the need to urgently stop the flows, all led to one provisional answer – Turkey (as seen, the psychological dimension of these negotiations was quite complex). The collaboration with Turkey was thus not only necessary, but mandatory for the EU to control the influx of refugees. This cooperation and close collaboration came also in the context in which Turkey itself was overwhelmed by the refugee waves coming especially from the neighbouring Syria, but also from Iraq and Afghanistan. Therefore, in a regional context full of conflicts of different nature, Turkey certainly needed itself help and assistance in order to cope with the magnitude and amplexness of this migration crisis. It was created thence a truly favourable framework for negotiations, where the interdependence between the two parties was more that obvious, both needing each other: Europe tried to achieve the benevolence of Turkey to stem the flows and Turkey understood it could be helped by Europe – and not only financially. Concerning the time-limits, they were not closed, but given the fact it was all about a crisis to manage, the pressure and urgency of reaching an agreement was self-evident, as it can be understood from the numerous formal and informal meetings between the negotiating parties.

2. EU-TURKEY NEGOTIATIONS – JOINT ACTION PLAN AND THE READMISSION AGREEMENT

The present section aims to briefly analyze the EU-Turkey negotiations from different perspectives, using five main theoretical approaches: structural, strategic, processual, behavioral and cultural approaches, in order to identify the main variables that shaped the negotiation process and its outcomes, the theoretical and empirical evidence being therefore harmonically combined below.

2.1. STRUCTURAL APPROACHES

Structural approaches emphasize the importance of the distribution of power among negotiating actors, **power** being the main concept. If we think that an actor has power in a negotiation if, in the end, it fulfills its mandate¹¹, we can consider both the EU and Turkey being powerful actors, since both of them achieved a significant part of what they initially wanted. And this is because, on the basis of their historic relationship and multiple previous negotiations, they have built a mutual trust relationship, knowing they both need each other. Therefore, this case is not about a “power over” type of negotiation, in which one party tries to dominate the other, but rather “power with”, the EU-Turkey negotiation process in the context of the refugee crisis being mostly (not fully) characterized by an integrative type of

⁹ BBC News, *Migrant crisis: Migration to Europe explained in seven charts*, 2016; International Organization for Migration, *Irregular Migrant, Refugee Arrivals in Europe Top One Million in 2015: IOM*, 2015.

¹⁰ Priscilla Oltean, *op.cit.*, 93.

¹¹ Tanya Alfredson, Azeta Cungu, *Negotiation Theory and Practice - A Review of the Literature*, 2009, 9.

negotiation. If the structural approaches usually “define negotiations as conflict scenarios between opponents who maintain *incompatible goals*”¹², we should highlight that this is not applicable in the given case-study, since the EU and Turkey were both on the *same side* of the negotiation table, having *on the other side*, as a common problem, *the refugee crisis*. Therefore, they worked together as *partners* in order to better cope with this challenge and maximize the outcomes of their collaboration, having thence many compatible goals. Nevertheless, there were also short episodes that interrupted this “work with” logic, this integrative form of negotiating, when Turkey and the EU just tried to “work over” each other, to impose their point of view, adopting a taught attitude.

Concerning the power sources, since both parties were very well informed and prepared, the **information** they had (not only about the current migration crisis, but also about the other side’s interests) was definitely a source of power. Another source of power was the **position of negotiators** – many of the negotiation rounds took place at the highest level, gathering the president of Turkey, its Prime Minister, their Foreign and European Affairs Ministers and, on the other side, the president of the European Commission, of the European Parliament or Council, as well as the High Representative Federica Mogherini. All these leaders are in the top of the hierarchy, having important responsibilities and competences in dealing with the refugee crisis. **Relation-based sources of power** were also important, both the EU and Turkey being aware of the strong interdependence they have and of the multiple goals they share, not only in the field of migration management, but also in other strategically important domains like politics, energy and economy. Their common past experiences, their close long-term relationship surely influenced the way they negotiated, but the **contextual or situational sources** of power¹³ were however very important. In this respect, we think about the neorealist assumption that **structure** influences the agent, acting like a constraint that obliges the actor to behave in a certain way and not in another – so, **events happening in the international system influenced the behavior of actors**. For instance, the EU was, before the refugee crisis, not only in a deep-freezing phase of EU-Turkey accession negotiations, but also in a stage where the Turkish regime was often criticized for authoritarianism¹⁴, but **the refugee crisis changed the context and constrained, obliged the EU to open negotiations with Turkey** for the Joint Action Plan and the Readmission Agreement, and later also for accession. Moreover, in this confused framework of millions of refugees arriving in Turkey, and most of them **wanting to go further and reach Europe**, and also in the context in which, even though Europe was not prepared, more than one million have already made their way to the EU and highly destabilized it, **Turkey had an increased power**. Like the European Council president said, ‘**Turkey is a key, if not the ‘key’ to the issue**’¹⁵, the key to stop massive flows of migrants reaching Europe and to maintain the stability, the cohesion and the unity of the European Union. Turkey needed Europe in order to cope with the massive influx of refugees, but *Europe needed Turkey even more*. We can definitely stress the fact that **the refugee crisis gave Turkey more power** in these negotiations than it usually has or, in other words, *Turkey wouldn’t have had that much power if there was no refugee crisis to threat Europe*. This contextual/situational and immaterial source of power, respectively the capacity of keeping refugees there and preventing them from destabilizing Europe even more made the balance of power much more equilibrated. Turkey felt that it can push the EU to make substantial concessions, especially concerning the accession

¹² Tanya Alfredson, Azeta Cungu, *Negotiation Theory and Practice...*, 9

¹³ Lewicki Roy et.al., *Negotiations. Readings, exercises and cases*, 2010, p. 162.

¹⁴ Jacopo Barigazzi, *What Erdoğan wants from Europe? More help to deal with refugees, and action on Syria*, 2015.

¹⁵ Eszter Zalan, *EU summit focuses on border security, Turkey*, 2015.

negotiations and the visa liberation system, concessions that, in the absence of the crisis, would have been very hard or even impossible to achieve in such a short period of time. Therefore, Turkey – as a weaker actor – used the power that the refugee crisis offered to it to somehow equilibrate the economic and political power of the European block, knowing that the stability of the whole EU depends on Ankara's will and ability to "close migrants' door" to Europe. In fact, the EU has also lost power and influence over Turkey and in this way helped it to balance the scale because of its ante-crisis behavior, when it froze the accession negotiations and criticized Ankara for authoritarianism¹⁶.

2.2. STRATEGIC APPROACHES

These approaches perceive the negotiation as being a process through which two or more rational actors make a series of strategic choices in order to achieve the best possible outcomes, focusing thus not on means, but on goals¹⁷. The outcome, the final agreement is understood therefore as the result of mutual concessions. In the EU-Turkey Joint Action Plan and Readmission Agreement negotiations, both parties made serious concessions, working together in order to achieve the best possible outcome. The EU made concessions in terms of increasing humanitarian aid and financial assistance, as well as in accelerating the accession negotiations and the visa liberation, while Turkey agreed not only to keep there as many migrants as possible, but also to improve their living conditions, respecting their rights and fighting smugglers and illegal migration.

We will not insist too much on these approaches, because most of them are related to different games (like prisoners' dilemma, chicken games, stag hunt etc.) and the majority of these games rely on no possible information or communication between the parties – and this is not the case in the EU-Turkey negotiations in the aftermath of the refugee crisis, since they had countless and intense formal and informal negotiations, where communication was a key aspect for reaching agreements. It also has to be mentioned that the negotiation process was characterized by a win-win approach, and not by a zero-sum logic. Despite of the fact that the majority of the strategic approaches' assumptions do not apply to this case study, we found however that the EU and Turkey stopped negotiations and reached the agreement when they could not improve anymore the outcomes in a common, joint manner – fact that corresponds to one of the general rules proposed by the strategic approaches.

One final important input from these perspectives would be the fact that both actors had entered into negotiations having strategic plans, with specific, well defined objectives. The primary pre-established objective for the EU was to convince Turkey to "close the door" and keep there as many migrants as possible. In order to do so, it was ready to engage in supporting Ankara with funds and experts for improving migration and asylum legislation, for strengthening anti-smugglers operations and for disrupting migrants-trafficking networks. On the other side, Turkey had as primary objectives not only making the EU increase as much as possible its financial assistance, but it also decided to strategically use the pressure of migration threat to obtain visa liberation for Turkish citizens and the acceleration of accession negotiations. Therefore, there is no doubt that both parties entered these integrative negotiations with specific plans and already prepared sets of concessions. Eventually, both parties succeed in ensuring their primary goals while widening together the initial small pie in a win-win logic.

¹⁶ Barigazzi, *What Erdoğan wants from Europe?*...

¹⁷ Tanya Alfredson, Azeta Cungu, *Negotiation Theory and Practice - A Review of the Literature*, 2009, 10.

2.3. PROCESSUAL APPROACHES

Processual or concession-exchange approaches understand the outcome of negotiation being not based on resources or power, nor on goals and strategic planning, but on the process itself, process which consists in a series of concession exchanges¹⁸. In the first phase, namely in **the preparation phase**, EU and Turkey worked on their own, on identifying and understanding the causes of such a massive flow of refugees and on how the crisis effects can be better addressed. In this phase, they analyzed the cooperation that can be established between the EU and Ankara, since both of them have the same problem and feel overwhelmed because of the enormous number of migrants. They both perceived the other party as a source of help and assistance – EU identified Turkey as an actor that can help it to stem the flows or, at least, to significantly decrease them, whereas Turkey perceived the EU as an actor that can assist Turkish authorities in coping with the considerable expenses of taking care of millions of migrants. Both actors identified as common objectives to better manage the migration challenge and the crisis they are facing: *“Challenges are common and responses need to be coordinated. Negotiating candidate country Turkey and the EU are determined to confront and surmount the existing challenges in a concerted manner”*¹⁹. The **preliminary phase**, where the parties started their interactions concerning migration is not well-defined. On 17 May 2015, before the 18 May EU-Turkey Association Council, the High Representative for Foreign Affairs, Federica Mogherini, and the Commissioner for Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, had a working dinner with the Turkish Foreign Minister, Mevlüt Çavuşoğlu, and with the Minister for EU Affairs and Chief Negotiator, Volkan Bozkır. Migration was one of the most important issues on their agenda and so was the acceleration of accession negotiations²⁰. As seen, the first interactions on the increasing migration challenge took place before the summer of 2015, when huge waves of migrants firstly arrived in Europe and destabilized especially the border countries. In the light of having formal and informal meetings on the subject of migration, we understand that the first two phases were overlapped, the preparation being always updated according to the unpredictable and always changing context – even though the preparation of a general strengthening of EU-Turkey collaboration regarding migration existed way earlier. In August 2015, the specific preparation of the Joint Action Plan and, soon after, of the Readmission Agreement started in August-September 2015, mainly with the extraordinary EU Council Summit from 23rd of September, where the leaders discussed expressly about how to tackle the refugee waves, what are the main causes and the most appropriate solutions, if not for solving the crisis, at least for reducing its effects on the EU. The preliminary phase was characterized by many formal and informal meetings, which always ended with the common position that the EU and Turkey must cooperate for jointly manage the refugee crisis. Some examples of the preliminary informal meetings that led to a compromise and eventually to the Joint Action Plan Draft was the meeting that Donald Tusk and Recep Tayyip Erdoğan had in 9 September 2015 in Ankara, where they discussed how to prevent further illegal migration and, in the same time, ensure protection to those in need²¹. Also, before the Joint Action Plan Draft was agreed on the 5th of October, there was another extraordinary European Council Summit in Brussels, on 29 September, where the Turkish Prime-Minister and the 28 EU Heads of States and Governments met with the purpose of finally reaching a draft agreement on how to work together in order to stem the immigration

¹⁸ Tanya Alfredson, Azeta Cungu, *Negotiation Theory and Practice...*, 15.

¹⁹ European Commission - Fact Sheet, *EU-Turkey joint action plan*, 2015.

²⁰ European Commission – Statement, *Joint statement following a working dinner with Turkish Ministers Çavuşoğlu and Bozkır*, Brussels, 2015.

²¹ European Council, *President Tusk visits Turkey*, 2015.

flows²². This last example could be considered being part of the **information phase**, where parties presented their initial positions, since both the EU and Turkey started to stress their perspective and to crystalize some specific demands. The Turkish ambassador to the EU explained after the meeting that “*we are not asking for help but it would be useful to get help, for example with regard to health, education and social services for these people who are not going back anytime soon*”²³. Also, the European leaders stated many times they want Turkey to keep there the migrants, Hollande emphasizing that “*Europe must work with Turkey to ensure that refugees can stay there, find a job, and wait for the situation in Syria to improve*”²⁴. After the President of the European Commission, Jean-Claude Juncker, handed on 5 October 2015 the *Draft Action Plan* to the Turkish President, Recep Tayyip Erdoğan, there were established further meetings in order to negotiate, so we can consider that the **argumentation phase** had begun. The first informal meeting was established in the same day, it was a joint working dinner where the Turkish President continued the talks about the plan with Donald Tusk, Jean-Claude Juncker and Martin Schultz²⁵. Another informal meeting where the future agreement of the Joint Action Plan was discussed took place in Brussels on 12 November between President Erdogan and Donald Tusk²⁶. Just a few days later, on 16 October 2015, the Turkish Foreign Minister called the financial support of the EU ‘unacceptable’ and stressed that there is still no agreement on the migration crisis, given the fact that *the plan continued to be just draft*, although there was an *ad referendum* agreement on it. In spite of the fact that the EU leaders agreed on 15 October to accelerate not only the visa liberation, but also Turkey’s accession negotiations, Ankara asked for a larger financial support and criticized the EU: “*They announce they’ll take in 30,000 to 40,000 refugees and then they are nominated for the Nobel for that. We are hosting two and a half million refugees but nobody cares.*”²⁷ Turkey asked for 3 billion euros and **let the EU know that if it wants a deal on migration, this is the amount of financial support that Turkey needs** for keeping refugees there and cope with all their needs. Once with the 15 October Summit, where the EU leaders agreed they will re-energize the accession negotiations with Turkey and will fasten the visa liberation if Turkey meets certain conditions, and then with the 16 October Turkish declarations that there is no deal until the financial aid is increased up to 3 billion euros²⁸, we can see that the process entered in the fifth phase, the **adjustment/reconstruction phase**, where parties adjust their positions in a game of concession-counter concession deals. In the early days after this high demand from Turkey, EU was not sure about accepting the price, given the fact that it would have had consequences on the overall EU budget. The Turkish part also requested an establishment of a safe-zone in the North side of Syria, so that some refugees can be helped there instead of all arriving in Turkey. The EU finally accepted the 3 billion euros request, but made more specific demands on the way in which Turkey will strengthen its migration system (introducing visas for 3rd country citizens, enhancing law provisions against migrant traffickers etc.), and refused the second important request of Turkey about the Syrian safe-zone, arguing that Russia’s implications made the regional geopolitical context even more complicated and there is no possibility for the EU to positively respond to this request.

²² Andrew Rettman, *EU calls Turkey summit despite security scare*, Brussels, 2015.

²³ Jacopo Barigazzi, *What Erdoğan wants from Europe? More help to deal with refugees, and action on Syria*, 2015.

²⁴ Jacopo Barigazzi, *What Erdoğan wants from Europe?...*

²⁵ Jacopo Barigazzi, *EU recruits Erdoğan’s help on refugees – Tusk and the Turkish leader to launch a high-level working group*, 2015.

²⁶ ***, *EU, Turkish leaders to meet on migration in Brussels*, 2015.

²⁷ BBC News, *Migrant crisis: Turkey says no deal done on EU action plan*, 2015.

²⁸ BBC News, *Migrant crisis: EU backs Turkey action plan*, 2015.

Despite all challenges, criticism and difficulties, on 29 November 2015 the two parties agreed to activate the Joint Action Plan, finally reaching an agreement on a coordinated management of the refugee crisis²⁹. The **ultimate phase** has been completed after establishing the details and agreeing on the overall new EU-Turkey Joint Action Plan.

The negotiations were finished for the Joint Action Plan, but continued for fighting smugglers and returning refugees to Turkey. Since the topics that the EU and Turkey wanted to negotiate were too many and too sensitive and requested more negotiation time, the parties agreed to make two separate agreements and adopt the *small steps strategy*, discussing thus one issue at a time and reaching step-by-step the agreements. **First phases of the Readmission Agreement** negotiations were concomitant with final phases of the Joint Action Plan, both the EU and Turkey preparing their information and positions on this topic and had their preliminary interactions on fighting illegal migration and readmission of refugees before the 29 November Agreement was reached. Since the two parties had a wide experience of negotiating with each other and interacting so often on discussing the same migration topic, these two first phases went smoothly, both parties knowing the other one well enough in order to understand its needs, interests, context and preferences. During the **overlapped adjustment-reconstruction-formulation** phases, Turkey has agreed to take back all immigrants arriving in Europe from Turkey who do not need international protection, if (1) the EU accepts one Syrian refugee for every illegal migrant that is returned to Turkey and (2) if it assists returning operations both logistically and financially. The EU leaders and Turkey have also agreed that stronger actions needed to be taken against migrant traffickers, together with closing all possible pathways to illegally send migrants to Europe. The EU leaders have understood and emphasized the role of the Transatlantic Alliance in the migration issue, highlighting the importance of carrying out NATO operations in the Aegean Sea in order to manage maritime illegal migration more efficiently, position also accepted by Turkey. On 7 March European Council Summit, Turkey and the EU accepted a draft of the new agreement concerning, this time, fighting smugglers' networks and irregular migration, and a 1:1 return scheme, with details to be negotiated during the future Summit of 13 March 2016³⁰. In the **adjustment-reconstruction** phase, the EU leaders made important concessions in order to make Turkey accept the readmission agreement. Parties reiterated that Europeans will send back to Turkey illegal immigrants from Greece, and Turkey will welcome them and protect their rights in accordance to the international law. In exchange, for every illegal immigrant sent back to Turkey, the EU will resettle a legal Syrian refugee and ensure his/her international protection. Turkey's toughness and authority were encouraged by the contextual/situational power that the refugee crisis has given to Ankara, which took (again) advantage of the pressure of destabilization that Europe felt and tried to get the maximum from the EU. Not only that the EU will resettle a legal Syrian for every illegal migrant it sends back to Turkey, but the EU committed to accelerate (besides the visa liberation and the accession negotiations) the process of providing the 3 billion euros financial support and *the establishment of an additional fund to support Syrians in Turkey*. In this negotiation framework, Turkey and the EU have taken a mutual commitment to work together to improve humanitarian aid and domestic conditions in Syria³¹. A first round of informal negotiations of details took place on Friday morning, during breakfast time, where the European Commission President, Jean-Claude Juncker, the European Council President, Donald Tusk, and Germany's Prime Minister, Mark Rutte met Turkey's Prime Minister, Ahmet Davutoğlu. Although – as stated by the German Chancellor Angela Merkel – the atmosphere within the

²⁹ European Council, *Meeting of heads of state or government with Turkey - EU-Turkey statement*, 2015.

³⁰ European Council, Council of the European Union, *Statement of the EU Heads of State or Government*, 2016.

³¹ European Council, Council of the European Union, *Statement of the EU Heads of State or Government*

European Union, more exactly in the European Council was constructive, the EU leaders had difficulties in establishing the final ‘negotiation mandate’ for details due to be discussed and agreed on 13th of March 2016. Nevertheless, Donald Tusk understood the positions of all Member States and also their limits and red lines in making concessions. Therefore, in the **final phase** of formulation the Readmission Agreement, the EU leaders and Turkey have met in the joint European Council Summit on 13 March and established the **last details** in order to reach the agreement.

Returning to Turkey all the illegal migrants arriving in Greece after 20 March
For every Syrian readmitted by Turkey, another Syrian will be legally resettled in the EU – priority will be given to those who did not (try to) enter illegally
Accelerating the visa liberalization procedures
Speeding up the disbursement of the 3 billion euros Facility for Refugees in Turkey and ensuring further financial assistance
Preventing the appearance of new land and/or sea routs of illegal migration from Turkey to the EU
Once the irregular flows are stopped or significantly reduced, a Voluntary Humanitarian Admission Scheme will be activated
Re-energizing the accession negotiations
Improving humanitarian conditions inside Syria through joint action.

Table 1. 13 March 2016, main points of the EU-Turkey Readmission Agreement³².

As seen from above, **Turkey followed a soft-tough-soft approach**: at the beginning, it presented its willingness to collaborate and to strengthen cooperation with the EU, since it was a common urgent problem, to jointly act to tackle the crisis (very cooperative and willing to negotiate); after the negotiations begun, it changed its attitude and was rather tough than soft, pushing the EU to as many concessions as it could, knowing the Europeans virtually do not want refugees since there is no common policy on migration, nor administrative or institutional preliminary preparation in this regard. After obtaining an important series of concessions, finally it adopted again the soft attitude, being content with what it had achieved and proudly presented the agreements as a joint EU-Turkey commitment to help refugees and face together the crisis. During negotiations, Turkey used the pressure that the EU felt to stem de flows and enjoyed a position of power. The EU, as being the one under a **critical risk of insecurity** created by migrants, made more and far more important concessions than Tukey. The latest was, at first sight, the one which had the highest critical risk, given the number of refugees (more than 2,5 millions) at that time, but after a second thought, we find Turkey with a lower risk than Europe, having in view that most of the refugees and migrants from Turkey didn’t want to remain there, but to reach Europe – this meant that the EU was highly in danger. This explains the pressure felt by the EU to urgently reach a deal with Turkey – the more time “wasted” negotiating and not reaching the agreements, the biggest the number of illegal migrants that Europe has to deal with. Therefore, as we mentioned before, Europe needed Turkey more than Turkey needed Europe – if the deal with the EU didn’t work for Turkey, it would still have had the help of the UNHCR and of other humanitarian associations and this would have been enough for Turkey since many migrants would have left it to go in Europe. If Turkey have survived without the agreements, the EU would have had a really hard time if the flows were not stemmed, so it definitely needed to reach the

³² European Council, *EU-Turkey statement*, 2016.

agreements with Ankara in order to maintain and protect its unity, stability and cohesion (all of them being already pretty weak, since the EU went from crisis to crisis in the last few years).

2.4. BEHAVIORAL APPROACHES

There is no doubt that the individual aspects, mainly the personality of negotiators and psychological dimension of these negotiations were important. **President Erdogan** was one of the most important negotiators involved in reaching the two agreements. He is known for his aggressive and competing style, being the subject of multiple critics concerning his authoritarianism. His assertiveness was important in the EU-Turkey negotiations, even more because of the favorable context in which Turkey was positioned by the refugee crisis.

*“Few (...) have had greater impact on Turkish political life than Tayyip Erdogan... He has been **dominant in both the domestic and the foreign policy** of Turkey. In many ways, it seems that there is no AKP or related movement but rather the **hegemony and dominance of Erdogan**”³³.*

His strong personality had a big input in scaling the balance of power, imposing itself as a tough negotiator and this undoubtedly contributed, as well as the time pressure and critical risk, to make the EU concede more. The EU knew him as being impulsive, aggressive and “power-hungry”³⁴ and, in the light of needing an agreement, the EU negotiators had the difficult responsibility to make him behave and reach those two migration agreements. In this process, **Mogherini** played a significant role, her composure³⁵ and mediating abilities counter-balancing the impulsivity of the Turkish president, calming down the spirits every time they were too tense. Its experience as a mediator in the Iran file, as well as in Serbia-Kosovo relations³⁶, helped her mediating between the EU leaders wishes and needs on one side, and the Turkish interests and requests, on the other side. **Tusk**’s pragmatic and tenacious³⁷ personality also helped the EU to impose conditions to Turkey, such as enhancing its migration law system, fulfilling its benchmarks concerning the road map for liberalization of visas etc. Its “ever-striving (...) enterprising, ambitious and determined personality to do things well, and an unyielding dedication to his plan until the goals are achieved”³⁸ were essential in ensuring that the EU is not only pursuing its goals in terms of stemming the flows, but also making Turkey concede and eventually sign the agreements. Its charisma and ability “to maneuvering between fractions and balancing the contrasting points of view”³⁹ were crucial also when mediating between the 28 different points of view in the European Summits. He was the one who knew the red lines and interests of all EU Member States and therefore he was the one that understood the best what the EU can and cannot negotiate with its Turkish counterpart. Charisma was a personality characteristic not only for Tusk, but also for **Davutoğlu**, the Turkish Prime-minister, whose academic experience and rhetorical skills were well employed during negotiations in order to propose solutions and stand for his position: “Davutoglu has... a reputation as **someone able to explain even the most contentious and complex issues in a simple way and to put on the table solutions that**

³³ M. Hakan Yavuz, *Secularism and Muslim Democracy in Turkey*, 2009.

³⁴ Aylin Ş. Görener, Meltem Ş. Ucal, *Personality and Leadership Style of Recep Tayyip Erdogan: Implications for Turkish Foreign Policy*, 2011.

³⁵ Lizzy Davies, *A portrait of Federica Mogherini, the EU's next foreign policy chief*, 2015.

³⁶ Maïa de la Baume, Jacopo Barigazzi, *Mogherini shakes up staff, mission*, 2016.

³⁷ Andrew Rettman, *Who is Tusk and what does he mean for the EU?*, 2014.

³⁸ *Donald Tusk - Personality Profile*, no year.

³⁹ Patryk Szambelan, *Charismatic mediator: Donald Tusk, the new president of the European Council*, 2014.

seem natural”⁴⁰. His ability of presenting facts and his charisma in requesting with arguments the EU’s concessions were important in making the EU change its position and offer more. Also, the compatibility between actors was positive and this strongly influenced the outcomes of the agreements, both parties being satisfied with the final results: the EU was relieved because it succeeded to stop the flows and to make Turkey improve its fight against illegal migration, and Turkey was satisfied because it had an important financial and logistic support from the EU. In the overall negotiation process, the actors’ behavior was, more or less, characterized by the purple type: *give and take* model, good intentions, two-way exchange of concessions, even though there were also exceptions: when Turkey’s leaders called the EU proposals “unacceptable” and criticized their counter-part, the red (assertive, aggressive, demanding) type of behavior was the most pre-eminent, whereas the EU, when Turkey pointed that its proposal is “unacceptable”, adopted a blue, pacifying type of behavior.

2.5. CULTURAL APPROACHES

Turkey’s geographic position, at the intersection of the Western European culture and the Middle-East culture, had an important influence on negotiations. Since it had multiple previous interactions with its European partners, the cultural differences present in negotiations were not new neither for Europeans, nor for Turks, this being a factor that ensured the smoothness and rapidness of the negotiation process. Also, culture was an important argument for the EU in order to convince Turkey to keep migrants and refugees there: since Syria is its neighbour, it definitely can integrate refugees easier than Europeans, given the lack of a deep cultural gap. Both Syrians and Turks are Muslims (in general) and the cultures are (not the same, but) fairly close one to the other. Another very important aspect in negotiation was that, on the basis of Hofstede’s Six Dimensions, the Masculinity Index shares a common score for Turkey and for the EU, both of them being on the feminine side. This means that **the two actors have this feminine cultural identity**, characterized by **consensus-orientation and preference for cooperation** (besides this cultural compatibility, the other dimensions proposed by this model are different)⁴¹. This compatibility, this inclination towards understanding the other party’s necessities and interests, towards respecting the other’s views and perceptions and towards reaching a win-win agreement that makes all parties satisfied made the EU-Turkey negotiations a success both for the European Union and for Turkey.

CONCLUSIONS

The EU-Turkey negotiations could not have been explained or analyzed by using only one single approach proposed by the specialized literature, since all the five theoretical approaches harmonically completed each other and gave a special input to the analysis, helping us obtain a wide perspective of the process and its outcomes. Perhaps the processual approach was more suitable for this case study, since the overall negotiation process was characterized by a concessions exchange, but the power of actors and the balance between them was also important in reaching those concession. Moreover, the outcomes would have not been the same without the specific plans, strategies and objectives that both actors established before the negotiation process. In reaching the agreements, the two parties had

⁴⁰ Güldener Sonumut, *Neo-Ottoman minister: Ahmet Davutoğlu has redrawn Turkey’s foreign policy to put Istanbul at the centre of geopolitics*, 2016.

⁴¹ Victoria Aßmus, *Chance or Challenge: Is Turkey compatible with the European Union regarding to Geert Hofstede’s Six Dimensions of National Cultures and if yes, in which way?*, 2014.

also to constantly adapt their behavior and attitude according to one another, and their feminine cultural identity surely helped.

Regarding the role of the context and, thus, of the securitization of migration, we observed that it was important in starting, shaping and finalizing the two EU-Turkey migration agreements, namely the Joint Action Plan and the Readmission Agreement. After a very brief analysis using all these five approaches, we could observe that the refugee crisis and the securitization of migration strongly influenced the whole negotiation process: (1) **Structural perspective**: the refugee crisis changed the power balance, taking power from the EU and offering it to Turkey – it thus equilibrated the scale; (2) **Strategic perspective** - both actors made strategic plans to enhance cooperation and to strengthen their partnership in the field of migration because of the enormous refugee waves that triggered the crisis, both of them trying to maximize their gains; (3) **Processual perspective** – because of migrants and refugees, both actors made concessions so that they can improve together the management of the crisis and jointly face this challenge; (4) **Behavioral perspective** – the EU changed its position towards Turkey and adopted a blue-purple type of behavior (instead of the red, dominant ante-crisis attitude, especially concerning accession and the authoritarian Turkish regime) and Turkey also changed its, adopting a red-purple type, being both assertive and concessive – the actors had an overall purple, reciprocal concessive behavior because of the need and objective of jointly and more effectively tackle the crisis, which was already securitized, and therefore perceived as an essential security threat; (5) **Cultural perspective** – the securitization of migration, the urgency to find solutions enhanced both actors' feminine cultural approach to negotiations, making them more willing to cooperate and to reach an agreement in order to better cope together with the crisis they were both facing.

The EU-Turkey negotiations on improving their migration crisis response **were successful** for both parties. **The Joint Action Plan** had significant and almost immediate satisfying results: after only a couple of months, the number of immigrants arriving in Greece from Turkey has been reduced, Turkey opened the labor market for refugees, especially for Syrians, the EU “finalized the set-up of the Facility for Refugees in Turkey, with €3 billion available over the next two years to deal with the refugee influx.”⁴² Another important fulfillment made by Turkey on 8 January was introducing visas for Syrians coming in Turkey from Lebanon or other third countries, fact that determined a significant decrease of the number of Syrian refugees entering Turkey. Concerning the **EU-Turkey Readmission Agreement**, it also had an important result in terms of numbers of refugees arriving in Greece: if during 1 January-7 December 2015, there were **757,278** migrants arriving in Greece from Turkey, in the same period of 2016, there were only **172.234**⁴³, which is another tangible effect of the enhanced cooperation between the EU and Turkey in the field of migration diplomacy.

⁴² European Commission - Press release, *Managing the Refugee Crisis: Commission reports on implementation of EU-Turkey Joint Action Plan*, 2016.

⁴³ International Organization for Migration, *Mediterranean Migrant Arrivals Reach 352,471; Deaths at Sea: 4,733*, 2016.

What Turkey has done	What the European Union has done
Sustained work on the implementation of the Visa Liberalization Roadmap and the Greece-Turkey Readmission Agreement	Provided assistance via humanitarian organizations
Introduction of visas for Syrians entering Turkey from a third country	Finalized the set-up for the 3 billion euros Facility for Refugees in Turkey
Access for Syrians under protection to the labour market	Effort to activate as soon as possible the EU-Turkey Readmission Agreement
Progress on the draft legislation on personal data protection	The 17 th Chapter on Economic and Monetary Policy in accession negotiations was opened ⁴⁴
Efforts to better implement the Greece-Turkey Readmission Agreement	Adopted a Voluntarily Humanitarian Admission Scheme with Turkey for displaced Syrians
Prevention of further illegal departures, and effort to arrest smugglers and rescue migrants from the sea	Prepared a needs assessment for Syrian refugees under temporarily protection in Turkey

Table 2. The result of the Joint Action Plan⁴⁵.

⁴⁴ *EU and Turkey open fresh chapter in accession talks*, 2015.

⁴⁵ European Commission, *Managing the Refugee Crisis. Eu-Turkey Joint Action Plan: Implementation Report*, no year.

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PROTECTION MECHANISMS OF NATIONAL AND ETHNIC MINORITIES

Ruxandra NUT¹

ABSTRACT:

IN CONTEMPORARY SOCIETY, THE PROTECTION AND PROMOTION OF HUMAN RIGHTS HAS BECOME A MATTER OF MAJOR IMPORTANCE. BASIC RIGHTS SUCH AS LIFE, LIBERTY, PROPERTY, FREEDOM OF EXPRESSION, RELIGION, ASSOCIATION AND CONSCIENCE ARE INDIVIDUALLY ASSIGNED AND PROTECTED BY NUMEROUS CONVENTIONS. BUT THESE GENERAL RIGHTS ARE NOT ENOUGH TO STOP DISCRIMINATION, OPPRESSION OR HUMILIATION OF DIFFERENT GROUPS. IN STATES WHERE THERE ARE MINORITIES, PARTICULAR ATTENTION SHOULD BE PAID TO THE MANAGEMENT OF THEIR SPECIFIC RIGHTS. THIS IMPLIES A CERTAIN DEGREE OF INTEGRATION, ACHIEVED WITH THE MINORITY'S CONSENT. PROTECTION INCLUDES ACCESS TO RESOURCES AND SERVICES, CULTURAL HERITAGE, CONFESSIONAL FREEDOM, EDUCATION IN MOTHER TONGUE ETC. IN ORDER TO PROTECT MINORITIES PROPERLY AND BRING TOGETHER ALL THESE ISSUES, STATES AND INTERNATIONAL ORGANIZATIONS HAVE TRIED TO REACH A CONSENSUS THROUGH NUMEROUS CONVENTIONS AND AGREEMENTS TO FACILITATE THIS MISSION. THUS, EACH ORGANIZATION HAD ITS OWN ATTEMPTS AND CAME UP WITH ITS OWN SOLUTIONS. THIS ARTICLE AIMS TO ANALYZE THE MAIN MECHANISMS FOR THE PROTECTION OF MINORITIES, AS ELABORATED BY INTERNATIONAL ORGANIZATIONS.

KEYWORDS: NATIONAL AND ETHNIC MINORITIES, DISCRIMINATION, MINORITY RIGHTS, PROTECTION MECHANISMS, INTERNATIONAL ORGANIZATIONS.

INTRODUCTION

The relationship between state, majority and minorities has never been a simple one and has embraced several forms over time. Whether it was elimination, assimilation, tolerance or protection, this issue has always raised questions and required solutions and decisions.

Currently, elimination or extermination is an illegal practice that is harshly punished. Forced assimilation is neither accepted. Even tolerance is no longer considered an option, because in order to develop harmoniously from a cultural, social or economic point of view, a minority must not be ignored and marginalized, but needs the support and positive attitude of the state and its citizens towards cultural pluralism. The best solution, the only viable option in contemporary society, is the protection and promotion of minority rights. This implies a certain degree of integration, achieved with the consent of minorities, in order to ensure the rights, without undermining or restricting the identity of the group or persons. But protection is not limited to integration, but also includes their physical existence on the territories where they live, access to resources, cultural heritage and confessional freedom, access to services,

¹ Phd, Babeş-Bolyai University, e-mail: nut_ruxandra@yahoo.com

education in the mother tongue etc. To protect minorities and bring together all these issues, states and international organizations have tried to reach a consensus by numerous conventions and agreements.

THE UNITED NATIONS AND THE PROTECTION OF MINORITIES

The first step made by the United Nations organization in managing the minorities issue was the adoption of the UN Charter, on June 26, 1945, which has its main objectives mentioned in the Preamble: "We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom."²

Even if the document does not have specific references regarding minorities, it sets the general framework for the protection of fundamental human rights.

Moreover, it introduces the Economic and Social Council as the managing body for the economic, social, cultural, educational or healthcare systems.

Three years later, in 1948, the UN Commission on Human Rights drafted the Universal Declaration of Human Rights, that promotes freedom, equality and non-discrimination. Thus, the first three articles thereof mentions that " All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person."³

The document also refers to issues such as equality before the law and the right to legal protection without discrimination, the right to property and association, freedom of thought, expression, conscience and religion, the right to education, etc.

Because the Universal Declaration of Human Rights had no legal value, the Commission on Human Rights decided to create the necessary legal framework for human rights protection. Thus, in 1976, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were introduced.

Article 27 of the International Covenant on Civil and Political Rights refers to minorities and provides that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."⁴ The rest of the articles address general principles for human rights protection, such as self-determination, avoiding discrimination of any kind, confessional freedom, freedom of thinking or expression, freedom of association or participation in public life, access to services and social protection, equality before the law or the right to vote. One of the main provisions of the Covenant is the exclusion of any form of racial, national or religious hatred.

The International Covenant on Economic, Social and Cultural Rights supports in Article 1 the right of peoples to self-determination: „By virtue of that right they freely

² "UN Charter", accessed August 29, 2017, www.un.org/en/sections/un-charter/un-charter-full-text/.

³ "Universal Declaration of Human Rights", accessed August 29, 2017, www.un.org/en/universal-declaration-human-rights.

⁴ "International Covenant on Civil and Political Rights", accessed August 29, 2017, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.”⁵

The Convention comes with mentions regarding basic human needs: food, clothing, housing, access to medical services and education. It also supports gender equality and women’s rights, as well as working force occupation.

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on December 18, 1992 is the only document that specifically targets minority issues. It mentions that: “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”⁶ Also, “Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”⁷

According to the Declaration, the integration of minorities can only be achieved through active involvement in economic, social or cultural life. The state is obliged to ensure the necessary conditions for preserving their identity and promoting minorities in all fields. Providing education in the mother tongue is essential, so is the implication in the decision-making process targeting minority issues. Effective participation involves creating associations to promote the interests and representation at local and national level.

THE COUNCIL OF EUROPE AND THE PROTECTION OF MINORITIES

The Council of Europe has come up with its own approach to human rights with the European Convention for the Protection of Human Rights and Fundamental Freedoms, which came into force in 1953. The only article of the Convention which refers directly to minorities is Article 14, which provides as follows: " The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁸ Other articles support freedom of thought, expression, conscience, religion, freedom to use their mother tongue and freedom of association in order to protect their interests.

The Council of Europe’s Framework Convention for the Protection of National Minorities is the legal instrument for the protection of minorities and entered into force in 1998. The convention reiterates that protection of minorities is an integral part of human rights. Article 4 stipulates equality before the law and in all fields of activity: economic, social, cultural, political, between majority and national minorities. Article 5 illustrates the role of the state in this respect: "The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions

⁵ “International Covenant on Economic, Social and Cultural Rights”, accessed August 29, 2017, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁶ “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, Article 1, accessed August 30, 2017, <http://www.un.org/documents/ga/res/47/a47r135.htm>.

⁷ “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, Article 2, accessed August 30, 2017, <http://www.un.org/documents/ga/res/47/a47r135.htm>.

⁸ “Convention for the Protection of Human Rights and Fundamental Freedoms”, accessed August 30, 2017, http://www.echr.coe.int/Documents/Convention_ENG.pdf.

and cultural heritage”.⁹ The convention promotes tolerance, dialogue and cooperation irrespective of ethnic, linguistic, religious or cultural identity. Minorities enjoy freedom of religion, of thought and expression, have the right of association and the right to education in their mother tongue. States will also support cross-border cooperation between people sharing ethnic, linguistic, religious and cultural identities.

The European Charter for Regional or Minority Languages of the Council of Europe, signed on November 5, 1992, has as its central objective:

“a. the recognition of the regional or minority languages as an expression of cultural wealth;

c. the need for resolute action to promote regional or minority languages in order to safeguard them;

d. the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;

e. the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;

f. the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages.”¹⁰

According to the Charter, member states work to eliminate any restriction on regional or minority languages that can jeopardize the harmonious development, to ensure pre-school, pre-university and university total or partial education, to offer the possibility to address authorities in their native languages, to encourage media and any form of cultural manifestation and favor the contact between speakers of the same languages living in different states.

THE EUROPEAN UNION AND THE PROTECTION OF MINORITIES

The respect for minorities is a matter the EU considers of great importance. Consequently, the Treaty on European Union mentions in Article 2 that: " The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." ¹¹

The EU Charter of Fundamental Rights prohibits discrimination of any kind, supports equality before the law, freedom of thought, expression and association, confessional freedom and access to education.

Moreover, the Copenhagen Criteria (1993) regarding accession set some conditions. To become a member, a candidate must have "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." ¹²

⁹“Framework Convention for the Protection of National Minorities”, accessed August 30, 2017, http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H%2895%2910_FCNM_ExplanReport_en.pdf.

¹⁰“European Charter for Regional or Minority Languages”, accessed August 30, 2017, <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>.

¹¹“The Treaty on European Union”, accessed August 30, 2017, eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:PDF.

¹² “Copenhagen Criteria”, accessed August 30, 2017, http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm.

Directive 2000/43/EC requires member states to develop a national legislation that prohibits discrimination on ethnic or racial grounds in the economic or social sphere, as well as the creation of bodies to support discriminated persons.¹³

Also, inciting to violence and racial, ethnic or religious hatred should be punished according to the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, adopted in 2008, which engages member states to adopt appropriate legislation in this field.¹⁴

Thus, the EU offers financial support to actors such as NGOs, foundations or associations that support the fight against discrimination through a number of programs such as the European Instrument for Democracy and Human Rights (EIDHR) which addresses the issue of minorities with the aim of combating discrimination and ensuring equality and active participation of minorities in the social, economic and political life.

CONCLUSIONS

As we can notice, states and major international organizations have realized the need for specific measures to protect minorities. The process of integrating them is one that requires increased attention as well as the opening of both parts, the majority and the minority. Thus, fundamental human rights must be doubled by specific rights, such as access to mother tongue education, identity preservation through culture and religion or active participation in society to avoid exclusion.

In this regard, international organizations such as the UN, the Council of Europe or the EU have come up with viable solutions, establishing the legal framework for the protection of minorities. The documents with which they operate are numerous, ranging from general to specific rights.

Given that discrimination still exists in areas such as employment, education or health services, the ultimate goal is to combat it effectively, as well as combating racism or xenophobia, engaging in programs and activities aiming to reduce these phenomena. In addition to the legal framework or financial support, cooperation with civil society is important in bringing the minorities issue to public attention.

¹³ “The European Union and the Protection of the Rights of Persons Belonging to Minorities”, accessed August 30, 2017, www.eidhr.eu/files/dmfile/minorities-guide_en.pdf.

¹⁴ “The European Union and the Protection of the Rights of Persons Belonging to Minorities”, accessed August 30, 2017, www.eidhr.eu/files/dmfile/minorities-guide_en.pdf.

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WORK FORCE MIGRATION AND SOCIETAL SECURITY, TIME FOR A REASSESSMENT

Ionuț Daniel MOLDOVAN¹
Adrian Daniel STAN²

ABSTRACT:

IN THE CONTEXT OF CURRENT GLOBALIZATION, THE MIGRATION CRISIS RESHAPES THE FUTURE DEVELOPMENT PATH OF MANY LOCAL COMMUNITIES MAINLY BY INFLUENCING SYSTEMATICALLY THE CHARACTERISTICS OF LABOR FORCE, FROM THE PROJECTION OF NATIONAL GROWTH STRATEGIES TO THE INCREASING IMPORTANCE OF SOCIAL ECONOMY. IN THIS CONTEXT MIGRANT WORKERS CAN REPRESENT BOTH A FRESH BREATH OF AIR FOR SUCH ECONOMIES OR A SOURCE OF SOCIAL UNREST FOR THE WHOLE SYSTEM IN THE HOST COUNTRY. EU'S STRATEGIC FRAMEWORK, DERIVED FROM ITS EUROPE 2020 AGENDA, IS ADDRESSING THESE PRIORITIES IN VERY BROAD TERMS, WITHOUT STRUGGLING TO ASSESS THE EFFECTS OF EACH PROGRAM UPON THEIR LOCAL OR REGIONAL BENEFACTORS.

OUR AIM IS TO EXPLOIT THE RELATIONSHIP BETWEEN LABOR FORCE REGULATION, SOCIAL INCLUSION AND EDUCATION, IN AN ATTEMPT TO FIND THE BEST REFERENCES IN TERMS OF PREDICTABILITY AND SUSTAINABILITY FOR SUCH MIGRANT WORKERS.

IT IS INTERESTING TO WATCH AND ANALYZE HOW EUROPEAN COUNTRIES WILL SUCCEED IN RECONCILING THE NEED FOR WORKFORCE WITH SECURITY POLICIES, REFERRING HERE IN PARTICULAR TO SOCIAL SECURITY POLICIES. IN ORDER TO ACHIEVE SUCCESSFUL INTEGRATION, IT IS IMPORTANT TO INVESTIGATE BOTH THE TOLERANCE OF THE STATE AND ITS CITIZENS REGARDING THIS PHENOMENON, AS WELL AS THE LEVEL OF ACCEPTANCE FROM THE IMMIGRANTS' PERSPECTIVE.

THIS PAPER EXAMINES, IN THE FIRST PHASE, THE RELATIONS BETWEEN MIGRANTS AND SECURITY BY TRYING TO PUT IN BALANCE THE BENEFITS OF MIGRANTS FOR THE LABOR MARKET AND THE RISKS, IN PARTICULAR, THE RISKS TO SOCIAL SECURITY. SECONDLY, WE WILL DISCUSS ABOUT SECURING THE PROBLEM OF MIGRANTS BY TRYING TO SEE HOW MEDIA INFLUENCES PUBLIC OPINION AND HOW IT CAN REDUCE TENSIONS AMONG LOCAL COMMUNITIES, THUS ADDRESSING SOCIETAL SECURITY ISSUES. THE ANALYSIS WILL FOCUS MAINLY ON ROMANIAN WORKERS AND THEIR ADAPTING MECHANISMS, AS MEANS OF INTEGRATION WITHIN THE SPANISH AND BRITISH LABOR MARKETS. WHAT ARE THE CRITERIA WHICH DETERMINE A GOOD FUNCTIONING FOR THIS RELATIONSHIP? HOW IS THE PUBLIC OPINION ACTUALLY FORMED, GIVEN THE INFLUENCE THAT MEDIA CAN HAVE ON THE DECISION-MAKERS, AND WHO HAS MORE LEVERAGE TO BOOST A FUNCTIONAL INTEGRATION SCENARIO FOR SUCH GROUPS? THE PURPOSE IS TO BUILD A COHESIVE SOCIETY IN WHICH PEOPLE ARE EMPOWERED TO ANTICIPATE AND MANAGE CHANGE, AND CAN ACTIVELY PARTICIPATE IN SOCIETY AND ECONOMY.

KEYWORDS: MIGRATION, SOCIETAL SECURITY, LABOR FORCE, SECURITIZATION.

¹ Moldovan Ionuț Daniel, PhD, Doctoral School of International Relations and Security Studies, Babeș-Bolyai University, e-mail: ionut.moldovan22@gmail.com.

² Stan Adrian Daniel, Assistant PhD, Department of International Studies and Contemporary History, History and Philosophy Faculty, Babeș-Bolyai University, e-mail: adrian.stan@ubbcluj.ro.

INTRODUCTION

"In recent years, the number of migrants has increased in volume, migratory flows have drawn the attention of security experts concerned with the effects of immense flows of migrants around the world".³ Migration flows have the potential to affect the power of a state, whether economic, military or diplomatic. Although migration has a lot of negative effects can also bring benefits in the sense that "states compete to harness well-educated and highly skilled migrant workers, particularly in areas such as information technology and the knowledge-based economy, two areas that represent assets and vectors of power in the context of globalization."⁴

Migrant workers can, to a lesser extent, increase the host state's strategy by providing technical expertise and specific information, and states can harness foreign groups to promote their interests globally. They are not seen only as people who may steal jobs but also it is believed that immigrants can arrive to European Union to improve their living standards because of social welfare systems. This exploitation is something Europeans fear, especially now after the economics of EU has suffered from great recession.⁵

Labor migration has gained momentum and is becoming increasingly important both for host and home countries due to the new dynamism of the global economy. With the possibility of free movement, starting January 1, 2002, after the renunciation of the visa regime for Romanian citizens traveling to the Schengen area, the phenomenon of leaving for work abroad has increased.

BETWEEN BENEFITS AND BURDEN

The number of international migrants, persons living in a country other than where they were born reached 244 million in 2015 for the world as a whole, a 41 % increase compared to 2000, according to new data presented by the United Nations.⁶ In Europe, cumulative demographic factors such as mortality and fertility loss affect the course of economic development. These demographic changes are most likely to induce doubts and uncertainty regarding the capacity of the state to actually address the consequences of an increased tax burden upon the social body, thus contribution to social insecurity. In short, the fear is that spending on old-age rights will continue to increase as there are fewer young people who can contribute to the tax base.

Not just Romania, but the whole of Europe is facing serious demographic problems and gloomy prospects. The long term projections shows signs that in 15-20 years the labor market will shrink while the health and pension budgets, supported mainly from the state budget, will increase.

Europe competes with other global players to attract qualified workforce, especially in key sectors such as science, technology, engineering and healthcare. If in the past we had a race to develop and maintain military strenght, there is now a global race to attract talented brains from the highly developed economies of Europe, North America and Australia, and the emerging global economies. As a result, EU's "Migration Agenda" refers mainly to "high-skilled third-country migrants" and the need to "identify those economic sectors and

³ The top ten migrant-receiving countries are (in regional order): the United States, Canada, Germany, France, the United Kingdom, Spain, Russia, Ukraine, Saudi Arabia and India (EUISS/ESPAS 2015)

⁴ Rudolph Christopher "Security and the Political Economy of International Migration", American Political Science Review, Vol. 97, No. 4 (November) (2003), 603-620.

⁵ Huysmans, Jef. "The European Union And The Securitization Of Migration" *JCMS: Journal of Common Market Studies* 38.5 (2000), 767.

⁶ United Nations, Department of Economic and Social Affairs available at <http://www.un.org/en/development/desa/population/migration/index.shtml> accessed on 28.08.2017

occupations facing ... difficulties in recruitment or lack of qualifications".⁷ Focusing attention on highly qualified migrants is not only about importing human capital to reduce or eliminate gaps in the labor market, but also about stimulating innovation and supporting sustainable growth, reflecting the same belief that qualified migrants will adapt more easily to companies and local communities in the host country.

Moreover, as a benefit, migration can significantly contribute to the ability to adjust labor markets as recent estimates show that up to a quarter of the asymmetric labor market shock, which occurs at different times, and with different intensities in different countries, may have been absorbed by migration within one year.⁸

In terms of the social burden, a study in 2013 suggests that the impact of cumulated waves of migration over the last 50 years in European countries is on average near zero, rarely exceeding 0.5% of GDP either in positive or negative terms, except for Switzerland and Luxembourg, where immigrants provide an estimated net benefit of around 2% of GDP.⁹ Under these circumstances, because the tax impact, both in positive and negative terms, is quite small, we can say that immigrants do not represent any burden on the host country's fiscal system.

Another positive argument is that remittances by international migrants play an important role in developing countries of origin, being more important than official development assistance. But, despite this, home countries have difficulties in translating remittance revenue into sustainable development and in contrast they may increase inequality, encourage consumption of imports, and create dependency. The macro economic effects of remittances are not that great since the receiver cannot overcome structural problems such as: corruption, poor economic climate or even bad governance.¹⁰

If money sent to the country of origin is the major advantage, the loss of human resources, especially of highly qualified people, represents a fairly high cost. This situation is better represented by de Haas when trying to connect the migration phenomenon with the path of reaching a certain level of development or welfare. In his analysis, we have a macro-level (represented by its main currents and paths of migration), the meso level (equivalent to a broad range of regional or local traits), and the individual level (specific to migrants' socio-economic environment).¹¹

When addressing the sources of migration we should see this phenomenon within the framework of a circular mobility, involving all three main actors that influence this process: the country of origin, the transit routes (either we are talking about countries or even regions) and the destination countries.

⁷ European Commission – Speech, State of the Union 2015: Time for Honesty, Unity and Solidarity available at http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm accessed on 28.08.2017

⁸ J. Jauer, T. Liebig, P. Martin and P. Puhani "Migration as an Adjustment Mechanism in the Crisis? A Comparison of Europe and the United States", OECD Social, Employment and Migration Working Papers, No. 155, OECD Publishing, Paris, (2014), available at <http://dx.doi.org/10.1787/5jzb8p51gvhl-en> accessed on 28.08.2017

⁹ T. Liebig and J. Mo "The Fiscal Impact of Immigration in OECD Countries", International Migration Outlook 2013, OECD Publishing, Paris, (2013), available at http://dx.doi.org/10.1787/migr_outlook-2013-6-en accessed on 28.08.2017

¹⁰ S. Newell, *The Modernity Bluff: Crime, Consumption, and Citizenship in Cote D'Ivoire*, (Chicago :University Press, Chicago, 2012), 27-29.

¹¹ H. De Haas, "The Internal dynamics of migrations processes. A theoretical inquiry", *Journal of Ethic and Migration Studies*, 2010, 4.

SOCIETAL SECURITY

As I said above, migration has a demographic impact, both for countries of origin and for host countries, not only by increasing the size of the population, but also by changing the age pyramid of the population in the host countries. This change in the size of a population can bring about a change in the social life of people, which can still cause a change in various other aspects of human life, such as economic, cultural and political. This is the point where we have to take into account the social security that refers to the "ability of society to preserve its essential characteristics in the face of varying circumstances and despite the potential or real threats".¹² Social security is compromised when a community perceives a threat to its identity, identity being defined as a set of ideas and practices that identify certain individuals as members of a social group.¹³

William Bloom proposes an identity theory stating that "in order to achieve psychological security, each individual possesses an inwardness of internalization, identifying with the behavior, habits and attitudes of significant figures in his social environment, that is, people are actively seeking to consolidate and protect identity".¹⁴

Barry Buzan is another author who also describes the security of society as an identity concept: "Social security concerns, traditional language patterns, culture, religious and national identities, and habits must be maintained at a satisfactory level development".¹⁵ Extending the interest of national security in the field of social security results from the role of the contemporary democratic state, whose duty is to take care of its citizens, regardless of their material status, in order to allow them to take part in social life.

Because the security of society is based on identity, as Buzan Barry, Ole Waever and Jaap de Wil argue that "the social sector represents identity," and "society is about identity ..." it follows that "the concept of social security can be understood as "identity security".¹⁶ They are also those who propose three categories of threats to social security. The first threat identified is migration, saying that this is a situation where "X people are overcome or diluted by influxes of Y people;" X community will no longer be what it was because others will make up the population X Identity X will be reflected by a change in the composition of the population of the social group.¹⁷ For example, the latest data reveals a new trend under the pressure of the migration crisis in the EU; groups in some countries perceive migration as a threat and politicians change their speech in antagonistic directions, leading to increased tensions between Member States. There is a clear possibility of characterizing immigrants as a threat; often this characterization is communicated by political leaders justifying emergency measures as well as certain immediate changes, either internal changes or adherence to international rules and norms.

Migration, in this context, constitutes a threat to a society when 'alien' identities pose a threat or are perceived as threatening to the existing society's identity. Reports on the perception of European citizens about the migrant crisis reveal the fact that in Romania the arrival of the first fifteen people radically affected the public opinion and the media, and in

¹² Peter Hough, „*Understanding Global Security*” (New York: Routledge, 2004), 106.

¹³ Branka Panić, „*Societal security – security and identity*”, Carl Schmitt and Copenhagen School of Security Studies, No 13, April–June 2009.

¹⁴ William Bloom, „*Personal Identity, National Identity and International Relations*” (New York: Cambridge University Press, 1990), 16.

¹⁵ Barry Buzan, „*People, States, and Fear, 2nd ed.: An Agenda for International Security in the Post-Cold War Era*”, (London: Lynne Rienner Publishers, 1991), 19.

¹⁶ Barry Buzan, Ole Waever, Jaap de Wilde, „*Security: a New Framework for Analysis*”, (London: Lynne Rienner Publishers, 1998), 119.

¹⁷ Barry Buzan, Ole Waever, Jaap de Wilde, *Security: a New Framework for Analysis*, 121.

the host city, Galati, a protest took place, indicating a not quite good opinion about the existence of these migrants on Romania's territory. According to existing studies, the perception of the economic dimension of migration, such as the perception of labor market competition and the expectation of economic contributions at different levels, could affect ethnic hostility.

As for the speech on migration, besides the importance of ethnic balance in society, the concept of "social cohesion" has also become important due to concerns about social divisions, especially at the local level.

Migrants are qualified in several categories in the destination countries they adopt, and these categories are essential to politicizing the issue of migration. A common category is economic, family and humanitarian migration, which reflects three different motivations that often overlap within an individual. This label of economic motivation draws attention to a threat that migrants can pose to the local economy: migrants either threaten jobs or become a burden on the social system of the target country. And all migrants, such as humanity, are often viewed as an economic burden for the host state, without providing clear benefits.¹⁸

Securitization of the migration problem is achieved by using multiple and overlapping speeches, with migrants being presented as a threat on three different axes, namely: a cultural / identity axis, on an economic axis mentioned above (the loss of work being at the same time a burden on the social system) and a security axis defined by terrorism and crime.

The media have an important role in society's awareness and in maintaining the dominant constructs of the self and the other, so they play an instrumental role in securitization by putting the emphasis on "us" and "them" by explaining what constitutes a particular conflict and what can be done to stop it.¹⁹ The media may sometimes sabotage securitization attempts by filming and opposing cadres, either owned or borrowed from disheartening actors, but in most cases it only serves as a forum whereby securitization actors communicate their own framework.

Because the media rarely generate its own framework, it should be noted that the media often focuses on dramatic, sensational reporting. Selective use of frame elements can lead to a distorted picture of the problem at hand, which in part explains why security frameworks are prioritized. For these reasons, media coverage is essential to any understanding of the securitization of the migration issue.

Legal and illegal labor flows increased due to the collapse of economies in the process of reform and the growing level of unemployment and economic disparities.

We are enabling people to come to the UK and work legally, paying taxes and contributing, rather than allowing people to work in the shadow economy where they are often exploited. Many citizens of the new Member States already contribute significantly to the social and economic life of the UK. They will help to fill half a million job vacancies and we will benefit from this, whether they are plumbers, plasterers or pediatricians'."²⁰

After the renunciation of the visa regime for Romanian in 2002, the UK and Spain's economy was expanding and looking for workforce making them as country of destination for international migration. The evolution of Romanian migration to Spain shows a continuous growth until 2006 (211.325 Romanian migrants), and a great explosion after that, due to Schengen arrangements, reaching more than 800.000 migrants in 2016. Several studies also show that Romanian "migrants preferred locations where the native population was

¹⁸ S. D. Watson, *"The Securitization of Humanitarian Migration: Digging Moats and Sinking Boats"*, (New York: Routledge, 2009), 21.

¹⁹ S. D. Watson, *"The Securitization of Humanitarian Migration: Digging Moats and Sinking Boats"* (New York: Routledge, 2009), 22.

²⁰ David Blunkett, Home Secretary, 25 March 2004.

perceived as more understanding, allowing foreign workers to „live in normal conditions”.²¹ In 1999 50% of the Spanish population was in favor of Romania’s accession to the EU, while in contrast, only 26% of the French population. Moreover, in Spain 40% believed that immigration would be limited and there were no negative effects expected. Also, as the economic growth of Spain has experienced in the beginning of the years of 2000 demanded for workers in different sectors of the labor market, Spain and Romania signed a bilateral labor recruitment treaty in 2002.²²

Bilateral labor recruitments are an important mechanism for inter-state cooperation in order to protect migrant workers, to match labor demand and supply, to manage irregular migration and to regulate recruitment.

The directive on improving the enforcement of workers' rights was adopted. This requires Member States to ensure that one or more bodies at national level will provide support and legal assistance to EU migrant workers with the enforcement of their rights, effective legal protection of rights and easily accessible information in more than one EU language on the rights enjoyed by EU migrant workers and jobseekers.²³

In terms of social security those who were authorized to work in the UK could claim housing benefit to help pay their rent while working, and also may have access to tax credits and child benefit. Romanian national workers who became unemployed only acquired the same rights to non-contributory benefits, such as income -based Jobseeker’s Allowance, as other nationals if they have been continuously employed in accordance with the Home Office Worker Authorization Scheme for 12 months or more.

Nevertheless, following an article by the Prime Minister’s in the Financial Times on 27 November 2013 in which he said he shared concerns about the impact of lifting transitional restrictions on the right of Romanian and Bulgarian to work in the UK from 1 January 2014, the Government has introduced a raft of measures to further restrict social security. They refer to: starting from 1 January 2014, people coming to the UK must have been living in the UK for three months before they can claim income-based Jobseeker’s Allowance, jobseekers or former workers will have to show that they have a “genuine prospect of finding work” to continue to get Jobseeker’s Allowance after six months, starting from 1 March 2014, a new minimum earnings threshold to help determine whether an European national is or was in “genuine and effective” work, and so has a “right to reside” as a worker or self-employed person.

CONCLUSION

It is time to understand and accept that the mobility of professionals is part of our lives in the context of the 21st century globalization. There is no doubt that migration, in particular the migration of skilled labor, favors the development of beneficiary countries. There is also sufficient evidence to show that labor migration affects both countries of origin,

²¹ Liliana Hiris, “*The Social Context of European East-West Migration*” In Silasi, Grigore and Simina, Ovidiu Laurian “*Migration, Mobility and Human Rights at the Eastern Border of the European Union- Space of Freedom and Security*”, (Editura Universitatii de Vest, Timisoara, 2008), 28-34.

²² In these agreements regulating labour migration flows, the Spanish authorities, through Spanish Embassies in origin countries, notify the origin countries’ authorities of the number and type of workers needed, taking into account existing job offers. (There is no set quota; rather, the employers in Spain request a certain number of needed workers.) Origin countries in turn notify the Spanish authorities, through the Spanish Embassies, of the possibility of meeting this demand with their nationals willing to go to Spain.

Available at <http://www.unhcr.org/50aa5cfc9.pdf> and http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_385582.pdf accessed on 12.09.2017

²³<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2059&furtherNews=yes> accessed on 12.09.2017

both negatively and positively. The significant economic dimensions of migration, combined with the aging population in Europe, turn immigration into a priority research issue.

Since migration has become in the last few years a very pressing topic on the international agenda, efforts should be directed to support institutions in host countries, as well as transition ones, to manage the migratory flows. But since the root cause for massive immigration is located in the state of origin, this one should be the first to benefit from the support of international community. Labor forces migration is much easier to control and predict, while on the other side the migration caused by natural disasters or conflict driven migration is much more difficult to anticipate or contain.

Immigration can be viewed both as a major tax burden for European social systems or as a possible savior if it is properly exploited. The impact depends very much with regard to the age of the migrants, education and length of stay. On average, immigrants seem to have a positive net positive effect for host countries. Of course, these benefits are not uniformly distributed on the native population and on all sectors of the economy.

Both the academic community, as well as world decision making structures, acknowledge the fact that there won't be a durable solution to tackle the migration problem unless standards of living are made a top priority on the global agenda setting. Elevating the standards of living especially in poor and vulnerable areas makes things far less complicated on the long run for all of us. In order to stem development, the sources of funding are necessary; but why not using a mix of investment instruments that follow mainly a private logic of performance and not the public sector recipe. In such a way, the general standard of living will be lifted determining individuals to remain closer to their home territories and countries, thus contributing to the global peace and stability.

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TAXES AND CONTRIBUTIONS TAXATION IN ROMANIA

Claudiu – Constantin TALABĂ¹

Florin – Dumitru TALABĂ²

ABSTRACT: *BOTH IN ROMANIA AND IN THE REST OF THE EUROPEAN STATES, THE TOPIC OF TAXES AND CONTRIBUTIONS IS EXTREMELY DEBATED AND IT'S ALWAYS IN THE SPOTLIGHT. GIVEN THAT THE AUTHORITIES OFTEN BRING MANY LEGISLATIVE CHANGES, RELATED ESPECIALLY TO THE FISCAL CODE, INCLUDING THE DEADLINES FOR TAX STATEMENT SUBMISSION AND PAYMENT OF TAXES TO THE STATE BUDGET, THE AUTHORS OF THIS ARTICLE SET OUT TO SYNTHESIZE THE MAIN REGULATIONS WHICH TAX PAYERS, THIS INCLUDING ALL KINDS OF OWNERS, COMPANIES, FIRMS, INCOME ACQUIRING PERSONS, NEED TO KNOW IN 2017*

KEYWORDS: *TAXES, FISCAL LEGISLATION, EXPENSES, EXCISES, V.A.T.,*

I. THE CONTENT AND ROLE OF TAXES

Taxes are a form of sampling a portion of the income and/or wealth of natural or legal persons available to the state to cover public expenditures. This sampling is mandatory, non-refundable and without counter performance from the state.

The mandatory nature of taxes must be understood in the sense that their payment to the state is a task imposed on all natural and/or legal persons who make income from a certain source or possess a certain type of wealth for which, according to the law, they owe due.

The burden of paying income or profit tax rests with all natural and/or legal persons who make income from a certain source provided by law.

The role of taxes is manifested financially, economically and socially, the role of taxes that occur financially is the most important, as it is the main mean of obtaining the financial resources needed to cover public expenditures.

On a social level, the role of taxes is reflected in the fact that through them, the state proceeds to redistributing a large part of the gross domestic product between social groups and individuals, between natural and legal persons, granting social benefits to certain categories of persons, or tax incentives to encourage, stimulate certain areas of activity or areas considered disadvantaged.

¹ Police officer at Romanian General Police Inspectorate – Gorj County Police Inspectorate

² Police officer at Romanian General Police Inspectorate – Economic Criminality Investigation Directorate

II. THE SUBJECT OF THE TAX

The subject of the tax is the concrete element underlying the tax. It may be different depending on the origin of the income, the purpose pursued and the nature of the payer.

They may be subject to taxes and contributions: income, profit, price or fare, movable or immovable property, act or deed. Among the categories of taxable objects, the most widespread is *the income* through the variety of forms that it takes within the person who acquires it.

The income is the amount that a natural person earns from work, through collateral acts, or from services. Profit is included in the calculation basis by the difference between income and expense adjusted with non-deductible amounts. The price or fare can form the basis of calculation where the amounts owed to the budget are included in its structure (VAT, excise duties, etc.). The acts and deeds are used as the object of taxation, especially in setting the stamp taxes established for the issuance and authentication of some acts, the opening and debating of the successions, the settlement of the disputes by the courts.

III. THE CALCULATION BASE OR TAX MATERIAL

The calculation base or tax material is the element on which the tax calculation is based. Sometimes the taxable object is also the calculation basis. In the case of income (wages, profit, VAT), the calculation basis refers the determination of this taxable object. In other cases, the calculation basis differs from the taxable object and occurs as a distinct element (for example in the case of building taxes, the taxable object is the building and the calculation basis is the taxable value of the building).

Due to the extremely diverse nature of items that can be charged, several evaluation methods are used, among which:

- method of tax returns submitted by payers or third parties;
- flat-rate method;
- outdoor sign method, etc.

The direct evaluation method may use an intermediate or final tax base. The final tax base may be the result of influences occurred during the tax process, when deductions or legal deviations may appear.

A first criterion classifies evaluation methods in:

- direct assessment - based on taxpayers' declarations;
- indirect evaluation (by presumption):

Other types of evaluation methods may consist in:

- assessment based on third party statements;
- assessment based on external signs;
- flat rate assessment;
- administrative assessment.

1. Assessment based on fiscal declarations

The method of assessing the calculation base through the taxpayers' tax declaration is not a perfect method, but it has certain advantages compared to the practices previously used. The method is based on the honesty of the taxpayers and the deposited statements, but also on the right of the fiscal bodies to exercise control, allowing the correction of errors made with or without intent. However, the method has the disadvantage that it offers taxpayers the possibility to evade some of the taxable subject that can be charged through various techniques: *false documents, intentional fraudulent omissions, etc.*

This principle is intended to allow the taxpayer to comply voluntarily with the intention of impregnating ideas through exemplary power and tax incentives with the scope

to determine to declare and pay taxes and contribution owed without the need for unannounced or subsequent controls, and which would have far more serious consequences.

The assessment based on the tax statements of third parties who know exactly the payer's situation, sometimes comes to complete the previous method or can even be used as an independent method. It , also has the risk of not declaring some income, especially those in the parallel economy, or when some tax goods are not accounted for.

Flat-rate assessment is applicable where there are very many payers who have the obligation to keep summary records of the income or who are not obliged to keep these records. The method has advantages, as well as disadvantages. For taxpayers, the method is convenient, simplifying, and eliminating bookkeeping that involves some expenses. The method has the disadvantage that, irrespective of the techniques and procedures used, there is an undervaluation of the tax matter. Examples in this matter could be taxation of companies with a object of activity of restaurant or fast food depending on the seats declared at the tables or the tax of car wash services depending on the ramps available.

2. Assessment based on external signs (by presumption)

This method is simple but also imperfect, corresponding to some elements of fiscal justice.

In Romania, all the above-mentioned methods are generally used in assessment, but due to the practice and routine of the Fiscal Administration employees, *the method of direct assessment* and *the method of assessment based on income rules* are the most common used.

The method of direct assessment consists in determining the taxable income actually realized by the taxpayer. At its base is the declaration of taxation.

The method of assessment based on income rules is to establish a uniform, equal income for all who own a source of income released under identical conditions.

3. Tax components

The *subject of the tax (the taxpayer)* is the natural or legal persons who own or carry out the taxable object and which, according to the law, has the obligation to pay towards the budget. For a person to be subject, it must be able to exercise civil rights or have legal personality. For example: a profit-making company enters into legal relationships with the state; the employee who earns salary from income is the subject of wage tax and enters into legal relations with the state.

The *bearer (recipient)* of the tax is the person who actually supports the tax.

The *object of taxation* is the subject matter of taxation. For direct taxes, the object of taxation may be income or wealth.

The *source of tax* shows from what the tax is paid.

The *taxing unit* is used to express the size of the taxable object. As unit of taxation we can meet: monetary unit, square meter of usable area, hectare of land, piece, kilogram, liter, etc.

The *rate of tax* or the tax rate is the tax per unit of taxation.

The *mode of taxation* is the totality of the measures taken by the tax authorities in relation with each taxable subject, for the identification of the taxable object, the determination of the size of the tax material and the determination of the state tax owed.

The *payment term* indicates the date until which the tax has to be paid to the state.

IV. TYPES OF TAXES

1. Direct taxes: corporate income tax, dividend tax, income tax on individuals, wage tax and micro-enterprise tax.

Classification of direct taxes:

1.1. Real taxes

Real taxes (objective taxes or product taxes) are established *in relation with certain material objects* (land, buildings, factories, shops, etc.), taking into account the personal situation of the subject of the tax, applies to the gross product of the taxable object without any link to the subject matter of the tax. Types of real taxes are: land tax; tax on buildings; tax on industrial activities, trade and liberal professions, (applicable taxes in the field of gambling, respectively licenses and permits on machines); tax on movable capital or money.

1.2. Personal taxes

Personal taxes come in the form of: a) taxes *on income*; b) taxes on *wealth*, in close connection with the personal situation of the subject of the tax, which is why they are also known as subjective taxes.

Income taxes consist on taxes applicable to individuals and corporate taxes.

Taxes on wealth: on the actual wealth, on the movement of wealth (inheritance tax, sale, donation, stock-value bonds, bonds) and on wealth gains (added-value tax due to value increase of the building without the owner having made an investment in this respect - tax scales on notary fees imposed).

The single tax rate for most types of income made by individuals (natural persons) is 16%.

The categories of taxable incomes are:

- incomes from salaries;
- incomes from independent activities;
- incomes from the disposal of the use of the property (rent);
- retirement income over 1,000 Ron per month;
- incomes from agricultural, forestry and fish farming activities;
- incomes from prizes and gambling;
- incomes from investments;
- incomes from real estate transactions;
- incomes from other sources.

The categories of incomes exempted from taxes are:

- pensions within the minimum retirement point and social security benefits received;
- state allowances for children;
- maintenance pensions;
- scholarships for pupils, students and doctoral students;
- interests paid for state tiles and for sight deposits in accounts of banks;
- the amounts or goods received as aid;
- donations;
- sponsorships (to people who receive them);
- the amounts received by insured persons under the insurance contracts for goods or persons;
- incomes obtained from the trading of movable values, etc.
- the salary related to the conception and creation of software (certain criteria must be met, both by the employer and the employee); etc.

As a general rule, the declaration and payment of profit tax is made quarterly, until the 25th of the first month following the end of the I-III trimesters.

The finalization and payment of the profit tax for the fiscal year concerned shall be made until the 25 of March of the following year.

By way of exception, nonprofit organizations and companies which have earnings from cereals, technical plants and potato crops, fruit growing and viticulture have the obligation to declare and pay the annual profit tax, up to 25 of February of the following year.

Starting January 1, 2013, companies can opt for declaring and paying annual profit tax, with early payments made quarterly, and the option made is mandatory for at least two consecutive fiscal years.

The fiscal year is considered to be the calendar year.

The accounting year is usually the calendar year, but starting with 2009, certain categories of entities (Romanian branches of foreign companies, consolidated Romanian subsidiaries and subsidiaries of branches of foreign companies) may set a financial year that does not coincide with the calendar year, if the financial year of the parent company differs from the calendar year;

Setting a financial reporting period different from the calendar year does not change the period for which the profit tax is calculated, namely the calendar year.

The standard rate of profit tax is 16%, but there are some distinct odds for various specific activities such as gambling where the share is 5% of the income earned from these activities.

Taxation base: taxable profit is calculated as the difference between the income from any source and the expenses incurred for the purpose of realizing income from a tax year from which non-taxable income is deducted and to which non-deductible expenses are added.

The entities paying taxes on profits are:

- romanian companies;
- foreign companies operating in Romania through a permanent establishment;
- foreign companies and non-resident individuals who carry out activities in Romania in an association with or without legal personality;
- Foreign companies that earn income from or in connection with the movable transactions or transactions with shares / social parts of a Romanian company;
- resident natural persons associated with Romanian legal persons, for the incomes obtained both in Romania and abroad from associations without legal personality;
- legal entities with headquarters in Romania, established according to European law.

The entities exempt for profit tax are:

- state institutions, for specific activity;
- microenterprises;
- religious cults;
- education;
- owners' associations;
- Deposit Guarantee Fund in the Banking System, Investor Compensation Fund, Private Pension Guarantee Fund;
- The National Bank of Romania;
- non-profit organizations for specific activities; for economic activities within the limit of EUR 15,000 / year or 10% of the total exempted revenues.

2. Indirect taxes:

2.1. Excises - consumer fees

Excises are a special form of consumption tax due to the state budget for certain products in the country and from import, being included in their sales price.

They are levied for products that are consumed in large quantities and can not be replaced by consumers with others of the same type.

The categories of goods subject to excise duty are:

- alcohol, distillates, alcoholic beverages, wines and beer;
- tobacco products;
- energy products (gasoline, diesel, LPG, fuel oil, electricity);
- other products and product groups (coffee, crystal products, jewelry, fur, perfumery, cars, weapons, yachts and other vessels / craft).

2.2. Value added tax

The VAT (value added tax) represents the main indirect tax in Romania in terms of volume in the receipts to the state budget as well as from the point of view of the scope.

As a general rule, the tax period is the calendar month. An exception in this matter would be the situation where, for taxable persons registered for VAT purposes whose fiscal value at the end of the previous year did not exceed 100,000 euro and which during the previous year did not make one or more intra-Community acquisitions, the tax period is the calendar quarter.

As of 1 August 2010, taxable persons and non-taxable legal persons, which carry out intra-Community trade in goods and services, have the obligation to register in the "Register of intra-Community operators".

As of 1 January 2013, the system of VAT payable on collection is mandatory, for companies whose fiscal value in the previous calendar year does not exceed the ceiling of 2.250.000 lei, or 500.000 euros.

As of 1 January 2013, specific rules apply to the VAT collection system, for which companies are highlighted in the "Register of taxable persons applying the VAT system at the time of collection".

Domains in which VAT is applied are:

- delivery of goods (merchandising);
- service provision performed on the territory of the country
- import of goods and services;
- transfer of ownership of immovable property between taxpayers, as well as between them and natural persons;
- services performed by providers with headquarters or domicile abroad for which the place of supply is considered to be Romania.

Domains and situations in which VAT exemptions operates are:

• rents (for which the taxpayer can opt, if the VAT invoicing is to be notified to the territorial tax body) If the invoicing without VAT is opted, it is necessary to consider adjusting the right of deduction of the VAT on the acquisition or in relation to the expenses modernization, transformation, etc., the adjustment rates differ depending on the age of the buildings;

- hospitalization, medical care, and closely related operations.
- service provided by dentists and dental technicians as well as delivery of dentures
- care and supervision services provided by medical and paramedical staff
- transport of sick and injured persons by authorized entities
- organ and blood supply of human origin
- educational activity
- meditations given in particular by teachers
- service provision related to practicing sport or physical education

- public postal services, activities specific to public radio stations and television, other than commercial activities.

The standard rate of tax has encountered several modifications during the last years, such as follows:

Starting the 1st of July 2010, VAT standard rate was increased from 19% to 24%, an significant increment with a drastic effect on all areas and domains in which it had applicability.

From the 1st of January 2016, VAT standard rate was reduced from 24% to 20%, and starting the 1st of 2017, VAT rate suffered the last modification, being reduced from 20% to 19% (same value as in 2010)³.

According to the 2017 updated fiscal legislation, the reduced 9% VAT rate applies to the following services and domains:

- delivery of orthopedic products;
- delivery of medicines for human and veterinary use;
- hotel accommodation and other similar facilities, including the renting of lands destined for camping;
- delivery of aliments, including nonalcoholic drinks, destined for human or animal consumption, live domestic animals and birds, seeds, plants and ingredients used in preparing aliments, products used as aliments supplements or substitutes;
- catering and restaurant services, with the exception of alcoholic drinks (other than draft beer);
- delivery of drinkable water and water destined for agricultural irrigation;
- delivery of fertilizers and pesticides used in agriculture, seeds and other agricultural products destined for seeding or planting and services similar to the ones mentioned above, used in the agricultural sector and stipulated in the common order of public finances minister and rural development and agricultural minister⁴

The reduced 5% VAT rate applies to the following services and domains:

- school books, books, newspapers and magazines, other than those with exclusively or mainly advertising purposes ;
- services consisting in allowing access to castles, museums, memorial houses, historical monuments, archeological and architectural monuments, zoos, fairs, expositions, cultural and sport events, cinematography, other than the ones excepted according to art. 292 of Law no. 227/2015;
- delivery of homes as a part of social policy, including the land on which they are build

2.3. Taxation of the microenterprises

A microenterprise can be defined as a company that generates income other than: banking, insurance and reinsurance, capital markets, gambling, consulting and management.

Taxation of micro-enterprises:

- the fiscal year of the micro-enterprise is the calendar year and the tax rate on the revenue of micro-enterprises is **3%**.

The taxable base of the income tax on microenterprises is the income from any source, which is deducted from:

³ Law no. 571/2003 regarding the Fiscal Code which was replaced with Low no. 227/2015 regarding the Fiscal Code

⁴ The common order of public finances minister and rural development and agricultural minister no. 1155/868/2016 regarding the reduced 9% VAT rate for delivery of fertilizers and pesticides used in agriculture, seeds and other agricultural products destined for seeding or planting and services similar to the ones mentioned, used in the agricultural sector

- income related to the cost of product stocks;
- income related to costs of services in progress;
- income from the production of tangible and intangible assets;
- income from operating grants;
- income from provisions and adjustments for impairment or loss of value;
- income resulting from the restitution or cancellation of interest and / or late payment penalties, which were non-deductible expenses when calculating taxable profit;
- income from indemnities, from the insurance / reinsurance companies, for the damages caused to the goods of the nature of the stocks or of the tangible assets;
 - income from indemnities, from the insurance / reinsurance companies, for the damages caused to the goods of the nature of the stocks or of the own tangible assets;

2.4. Customs taxes

Customs taxes are those levies taken by the state when goods cross the country's borders (import, export, transit).

The basis of taxation is the customs value of the goods.

The rates of taxation are set out in the Customs Tariff (*T.A.R.I.C. Nomenclature*⁵).

Exemption from customs taxes:

- aids and donations of social, humanitarian, sports, didactic, etc.
- goods originating in the countries of the European Union
- foreign goods that become state property
- non-commercial samples, advertising materials, documentation, etc.
- goods of Romanian origin
- goods repaired abroad or replaced

2.5. Stamp and registration tax

The stamp and registration tax represents the payment of services rendered or works by various bodies or public institutions that receive, prepare or issue different acts, provide different services and solve certain legitimate interests of the subjects.

Stamp taxes are perceived on the following categories of documents and services:

- opening a actions and introducing applications to the courts
- exercise of appeals against judgments
- requests for the release of copies of certain acts
- for settling disputes before the judiciary bodies
- provision of services by public notaries
- authentication of certain acts, registration, correction, and reconfiguration of civil status acts upon request
- issuance of identification and citizenship documents
- certain permits and passports, driving licenses, hunting, fishing, etc.

VI. TYPES OF EXPENSES

Expenses are divided into three categories: 1) deductible expenses; 2) limited deductible expenses; 3) non-deductible expenses.

1.1. Integral deductible expenses

The general rule provides that only expenditures incurred for the purpose of taxable income are considered deductible expenses. The deductible expenses include:

⁵ Regulation (EEC) No 2658/87 of 23 July 1987 established the tariff and statistical nomenclature and the Common Customs Tariff – *Integrated Tariff of the European Communities*

- expenses for purchasing packages;
- expenses for work protection and expenses for the prevention of work accidents and occupational diseases;
- expenses such as work accidents and occupational diseases contributions and the expenses of insurance premiums for professional risk insurance;
- advertising expenses made to popularize the firm, products or services, based on a written contract, as well as the costs associated with the production of the materials needed for the broadcasting of the advertising messages, including the goods that are given in the advertising campaigns as samples, for the testing of the products and demonstrations at points of sale, as well as other goods and services provided to stimulate sales;
- transportation and accommodation expenses in the country and abroad, for employees and administrators, as well as for other natural persons assimilated to them;
- expenses for training and professional development of the staff employed;
- expenses for marketing, market study, promotion on existing or new markets, participation in fairs and exhibitions, business missions, publishing of own informative materials;
- research and development expenses that do not meet the conditions for being recognized as an intangible asset in accounting terms;
- expenses for improvement of management, IT systems, introduction, maintenance and improvement of quality management systems, obtaining certification according to quality standards;
- expenses on environmental protection and conservation of resources;
- the losses recorded in the removal of the unincorporated receivables, provided that: the bankruptcy procedure of the debtors was closed on the basis of a court decision, the debtor died and the claim can not be recovered from the heirs, the debtor is dissolved in the case of the company with limited liability with a single associate, or liquidated, without hier, or the debtor who is experiencing major financial difficulties affecting the entire patrimony;
- costs of fines, interest, penalties or increases due in commercial contracts;
- registration fees, contributions and compulsory contributions, regulated by the normative acts in force;
- Enrollment fees, contributions and contributions due to the Chambers of Commerce and Industry, trade unions and employers' organizations;
- expenses related to the valuation / revaluation of tangible fixed assets belonging to the public domain of the state or of the administrative-territorial units, received in administration / concession;
- expenditure on land registration or real estate advertising, as the case may be, the ownership of the state or of the territorial administrative units over the public goods received in the administration / concession;
- costs incurred as a result of the refund of subsidies received from national and international authorities;
- expenses with employee benefits in cash-settled cash instruments when the benefits are actually granted if they are taxed under the income tax rules.

1.2. Limited deductible expenses:

- Protocol expenses within the limit of a 2% quota applied to the difference between the total taxable income and the total tax expense, other than the protocol expenses and the corporation tax expenses;

- travel allowance paid to employees in Romania and abroad is limited to 2.5 times the legal level established for public institutions;
- social expenses are deductible up to 2% of wage bill;
- perishable, within the limits established by the specialized bodies of the central administration, together with the specialized institutions, with the approval of the Ministry of Public Finance;
- expenditure on meal tickets provided by employers;
- expenses with provisions and reserves under certain specific conditions;
- interest expenses and foreign exchange differences according to the reference interest rate of the National Bank of Romania and the level of indebtedness of the companies;
- Depreciation and specific expenses for cars, which fulfill certain characteristics, the amortization is limited to 1,500 lei / month;
- The costs of voluntary pensions are deductible for the employer up to the limit of 400 EUR per year per person and the voluntary health insurance premiums up to 250 EUR per year per person;
- Fees and contributions paid to non-governmental organizations and professional associations linked to the taxpayer's activity are deductible up to 4,000 € per year;
- operating, maintenance and repair expenses related to the cars used by persons with management and administration functions of the legal entity are limited deductible to at most one car belonging to each person with such attributions.

2. Nondeductible expenditure:

- Romanian corporate tax expenses, as well as income tax paid abroad;
- Interest / delay increases, fines, confiscations and penalties owed to Romanian / foreign authorities;
- expenditure on inventories or tangible assets identified as lacking in management or degraded, non-imputable, for which no insurance contracts have been concluded;
- expenses incurred in favor of shareholders or associates, other than those generated by payments for goods delivered or services provided to the taxpayer, at the market price for such goods or services; Attention: advances for settlement or even lodging of accommodation bills or different expenses of the company's representatives.
- expenses that are not based on supporting documents;
- Expenses with contributions paid over the established limits or not regulated by normative acts;
- wage and / or salary costs that are not taxed on the employee;
- expenditure on management services, consultancy, assistance or other services, for which taxpayers can not justify the need to provide them for the purposes of the activities carried out and for which no contracts are concluded;
- Expenditure on insurance premiums not related to the company's assets;
- sponsorship and private scholarship expenses are non-deductible, for which, however, tax credit is granted up to the lowest of 0,3% of turnover and 20% of the corporation tax due;
- expenditure recorded in the accounting records, based on a document issued by an inactive taxpayer;
- expenditures representing the value of fixed assets depreciations, if, as a result of a revaluation, there is a decrease in their value;
- 50% of the cost of motorized road vehicles not used solely for the purpose of economic activity with a maximum total mass not exceeding 3,500 kg and not more than 9 passenger seating, including the driver's seat which are in the ownership or use of

the company, except: vehicles used exclusively for emergency services, security and protection services and courier services; vehicles used by sales and purchasing agents; vehicles used for the carriage of passengers, including taxi services; vehicles used for the provision of paid services, including for hire to others or for training by driving schools; vehicles used as merchandise for commercial purposes.

- expenses with employee benefits in equity-settled equity instruments;
- expenses recorded in the accounting records, regardless of their nature, subsequently proved to be related to acts of corruption

VII. FISCAL MONOPOLIES

Monopoly is the right that the state reserves to produce and / or market certain consumer goods. Thus the state establishes tax monopolies on the production and / or selling of goods such as tobacco, salt, alcohol, matches etc.

The tax is equal to the difference between the selling price set by the State and the cost of production including the entrepreneur's profit.

Classification of monopolies according to their scope:

a) Full fiscal monopolies: it is set up by the state both on the production and on the wholesale or retail sale of goods;

b) Partial fiscal monopolies: it is established only on the production and wholesale trade, or only on the retail trade.

The income generated by the state through the establishment of fiscal monopolies are formed, on the one hand, *from the profit obtained in the process of production* of the respective goods, and on the other hand from the *indirect tax* included in the price, which is collected from the consumers of these goods .

Thus, state tax monopolies affect the real incomes of consumers.

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CONTACT:

Phone: +40766665670

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