

## **THE IMMIGRANT CRISIS AND THE LEGAL, HISTORICAL AND HUMANITARIAN ACCOUNTABILITY OF NATIONAL STATES AND THE INTERNATIONAL COMMUNITY**

### **Abstract**

Throughout the history people have faced the need to abandon their houses and seek salvation and security elsewhere to avoid persecution, armed conflicts, domestic political violence or the latest phenomenon of aggressive economic violence. In particular, the main problem for the most Balkan countries and broader is the phenomenon of massive departure of young age groups to the more developed European countries seeking a better life, a better individual and family perspective.

However, few historians are focused specifically in the issue of forced human displacement and in developing perspectives about the real problems within the bitter truth of millions of innocent people who are forced to leave their homes and their century long life in their settlements. For this reason, this scientific study will be focused in analyzing the historic, legal and current perspective faced by the contemporary society. The historical perspective provides us with scientific teachings of what was not included in the study and the consequences faced by the humanity during this century, known as the peak of values and human dignity in regard to basic human rights which have a universal character.

**Key words:** Migrant crisis, immigration, migrants, asylum seekers, refugees, refugee rights, history of humanity, international convention etc.

## **1. The historical context and the defense policies**

There have been many writings in the recent years about the issue of humanitarian action regarding immigrations, refugees and asylum seekers, as well as about the legal aspects of protecting this social category of people which is in rise if compared to the past. However, few historians are specifically focused in the issue of forced human displacement and in the development of the real perspectives regarding the bitter truth of millions of innocent people who are forced to leave their homes and their century long life in their settlements. For this reason, this scientific study will be focused in analyzing the historic, legal and current perspective faced by the contemporary society. The historical perspective provides us with scientific teachings of what was not included in the study and the consequences faced by the humanity during this century, known as the peak of values and human dignity in regard to basic human rights which have a universal character.<sup>1</sup>

Throughout the history people have faced the need to abandon their houses and seek salvation and security elsewhere to avoid persecution, armed conflicts, domestic political violence or the latest phenomenon of aggressive economic violence. In particular, the main problem for the most Balkan countries and broader is the phenomenon of massive departure of young age groups to the more developed European countries seeking a better life, a better individual and family perspective.

## **2. The analysis of this study will be also focused in an overview of forced displacement**

The analysis of this study will be also focused on an overview of forced displacement during this century and the increasing number of migrants and asylum seekers, who flee away from the unrest in Africa and the Middle East and the Balkan countries which then result in complex challenges for the European policymakers, who are also tackling the lack of economic increase and the fragmented national policies.

---

<sup>1</sup> Bashkim Selmani, PhD „ E drejta ndërkombëtare e refugjatëve të Kosovës” p.23-29 The First Private University „FON”-Skopje, 2012.

Concerning the role and position of the EU in regard to this disturbing phenomenon, according to a 2014 report by the International Organization for Migration, Europe is currently the most dangerous destination in the world for illegal migration, and the Mediterranean Sea is the most dangerous border crossing. Until today, the collective reaction of the European Union about the increasing migration crisis has been temporary, whereas the critics say that the Union is mostly focused in securing the bloc's borders, compared to protecting the migrant and refugee's rights.<sup>2</sup>

During this era it is also worth mentioning the insufficient analysis on the issue of problems facing refugees and internally displaced people. However, the problem of forced displacement, be it internally or abroad, is not new and the humanitarian efforts for relief of the suffering are also not unknown to the consciousness of the modern society.

### **3. Growing nationalistic parties in many member states and the concerns in regard to Islamic terrorism**

Facing the growth of many nationalistic parties in most of member states and the concerns in regard to Islamic terrorism, an already large threat to the whole continent, it remains to see whether political leaders will create a new climate for immigration reforms. Where do these immigrants come from?

The political turmoil in Middle East and all around Africa has renewed the tendency to leave to Europe. The number of illegal EU border trespassing was increased a lot in 2011, when thousands of Tunisians began to arrive at the Italian island of Lampedusa, 70 kilometers from Tunisia, shortly after the Arab Spring. The Sub-Saharan Africans, who had migrated earlier on to Libya, during the 2011 - 2012 migrated again after the new post-Gaddafi era turmoil. The latest increase of migrant's number along the EU coastline borders is attributed to the increasing number of Syrian refugees and those of Eritrea.<sup>3</sup>

---

<sup>2</sup> G.Goodwin-Gill, The Refugee in International Law, second edition Oxford University Press, Oxford, 1996 p. 118.

<sup>3</sup> Jeanne Park "Council of Foreign Affairs," The European Immigration Crisis p.2-12. 2015.

#### **4. The statistics from the European Commission confirm that the EU has registered around 626 thousand applications for political asylum in 2014**

According to the statistics from the European Commission, the EU has registered around 626 thousand applications for political asylum in 2014 – the highest number of applicants within the bloc since 1992. The illegal border crossing usually occurs through several large routes which include the southern and eastern borders of Europe. The central Mediterranean crossing, bordered with Italy, serving as the main entry point to Europe, is currently the most frequently used by the emigrants and asylum seekers from Syria, Iraq, Eritrea, Egypt and Somalia. The deterioration of the security situation in Libya, Central African Republic and South Sudan is also considered as a factor that has spurred the wave of immigrants.

Making a distinction between asylum seekers and economic migrants is not always an easy job, although these groups have the right to have different levels of assistance and protection under international law. This gray area is often exacerbated by unsustainable methods, according to which the asylum applications in the 28-member countries of the EU are often processed.

Which EU countries are mostly hit by the crisis?

The EU member countries mostly hit by the economic crisis like Cyprus, Greece, Italy, Malta and Spain have also served as the main entry points for immigrants and refugees, because of their proximity to the Mediterranean. On the other hand when we come to the Balkan Peninsula there are also some countries that face this type of problems like Greece, Albania, Macedonia, Serbia, Kosovo, Croatia, Slovenia, etc.

#### **5. Analysis of the practice of this problem over the years and the challenges of contemporary society**

If we would analyze the practice of this problem over the years we will observe that only in 2008, the Eastern Mediterranean route faced a growing increase in illegal immigration and from 2012, 51 % of the immigrants who crossed over to EU illegally did this through Greece. This tendency changed in 2013 when the Greek authorities expanded

border controls under the framework of the operation „Aspida Shield" which included the construction of a barbed wired fence in the Greek-Turkish border. The increased patrols in the waters off West Africa was planned to have an effect in curbing immigration throughout the West Mediterranean crossing into Spain during the past years. However, in the last year, this was the part of most serious attempts by large numbers of immigrants and asylum seekers to cross the border. These immigrants were mostly people fleeing from armed conflicts in Cameron, Central African Republic, Chad, Mali, Nigeria, Sudan and South Sudan. According to the Spanish Ministry of Interior, the number of immigrants who attempted illegal entry to Spain in 2014 was increased by almost 70 % compared to the previous year, or 12 549 persons.

Viewed from this angle, despite the attempts to strengthen border controls in Melilla and Ceuta, the Spanish territories, which together with some of Morocco's territories, are a steady stream of immigrants from Sub-Saharan Africa who continue to avoid obstacles in these two zones. However, the most used route for this purpose along the southern Europe perimeter remains the central Mediterranean crossing from Libya to Italy, which as a result has produced the latest wave of large irregular immigration.<sup>4</sup> On the other hand, this route is considered to be one of the most dangerous ones, "IOM estimates that the majority of the 3279 immigrants who had died on the Mediterranean during last year, in 2014, have occurred in this zone."<sup>5</sup> The international organization meanwhile highlights that the number of deaths could reach around 30 thousand by the end of this year. Some incidents which include boat overturns, including the last tragedy in the recent days when more than 800 people died. These have drawn global attention and prompted strong appeals by human rights activists, Pope Francis, as well as policy makers for a united European response to the crisis of immigrants.<sup>6</sup>

---

<sup>4</sup> According to the EU border agency, Frontex, in 2013 there were around 40 thousand illegal border crossovers along this route, almost four times the number of those discovered in 2012.

<sup>5</sup> G.Goodwin-Gill, *The Refugee in International Law*, second edition Oxford University Press, Oxford, 1996 p. 118.

<sup>6</sup> According to the Dublin Regulation, the countries that serve as entry points hold unilateral responsibility for immigrants. Reviewed in 2013, this EU law continues to determine the asylum seeker must remain in first European country of entrance, and that remains the only one responsible for examining applications for asylum to illegal immigrants.

## **6. The immigrants who travel towards other EU countries are forcefully returned to the country where they had initially entered**

The immigrants who travel towards other EU countries are forcefully returned to the country where they had initially entered. In order to ease the burden from the spread of the immigrants throughout the EU, the entry states along the southern periphery have called for a suspension of the Dublin Regulation. However, the northern countries like Germany, have noted that almost a third of 626 000 asylum applications in the 2014, were made within its borders. "Both the burden and the sharing are in the eye of the beholder. I don't know if any EU country will ever find the equity that is being sought," says Center for Strategic and International Studies, Senior fellow Heather Conley.

What conditions do these migrants face?

Migrant detention centers along Europe's southern periphery- in Greece, Italy, Malta, and Spain - have all invited charges of abuse and neglect over the years. Many rights' groups contend that a number of these centers violate Article III of the European Convention on Human Rights, which prohibits inhuman or degrading treatment. "We used to think of migration as a human security issue: protecting people and providing assistance," says Geneva Center for Security Policy deputy director Khalid Koser. "Now we clearly perceive - or misperceive - migration as a national security issue. And the risk of securitizing migration is that you risk legitimizing extraordinary responses".

In Italy, migrants face fines and deportation under the controversial Bossi-Fini immigration law, which stipulates that they must secure work contracts before entering the country. This 2002 law makes illegal migration - and aiding illicit migrants - punishable by fine or jail.

Despite its severity, many say the law has done little to curb the flow of migrants in recent years. The situation is especially acute in Greece, which has been hit hard by a five-year debt crisis and successive rounds of austerity measures. Overcrowded facilities lacking proper ventilation, clean water, and sanitation have been blamed for compromising migrants' health, and police mistreatment and harassment continue to elicit censure from

rights groups. Right-wing extremist groups like Golden Dawn that campaign on anti-immigrant platforms have also contributed to an uptick in xenophobic violence.

## **7. The consequences from the extremely high unemployment rates and the drastic cuts in public spending as a cause of this phenomenon**

The extremely high unemployment rates and the drastic cuts in public spending imply fewer opportunities for economic and social welfare support for immigrants and refugees. The budget for immigration issues in many of the Mediterranean countries remains limited because all EU countries have reduced public spending in the wake of the crippling economic crisis. Frontex itself, faced cuts in the annual budget from 118 million Euros in 2011 to 89 million Euros during the last years. On the other hand, the European recently pledged to allocate an additional 13.7 million Euros to Italy for its rescue operations for immigrants, whereas many human rights groups claim that these funds are insufficient. Contrariwise, in the northern richer parts, the immigrants are placed in asylum centers relatively well-managed and have more generous policies. These places that are difficult to reach usually take better care of the immigrants, but those who are able to sail towards the entry countries must secure expensive travel documents in order to ensure safe air passage by the help of traffickers. However, these countries remain inaccessible for the majority of immigrants who seek work or international protection. How did the European Union respond?

## **8. National interests have continuously exceeded the European interests in the areas of immigration and asylum**

Similar to the sovereignty and debt crisis, national interests have continuously surpassed European interests in the areas of immigration and asylum. This was best proved in 2011, when France reinstated the short border controls in the free movement Schengen Zone, a milestone of the European project, as a reaction to the wave of thousands of Tunisian and Libyan refugees, who were entering from the neighboring Italy. The approval of the policy for building "castles" by some EU member states, has caused a high

cost, claim certain human rights groups. In Greece, the implementation of strict border controls through its program "Aspida" has taken precedence over reform of the dysfunctional asylum system. In Italy, the rescue program "Mare Nostrum" (our sea), was divided into several stages, and in October 2014 it was replaced by a more limited program then Frontex, called "Triton." This included a third of the operating budget of its predecessor. The most economically stable countries of the north have continued to provide more comprehensive immigration and asylum policies. In September 2013, Sweden announced it would offer permanent residence to all Syrians. The same year, Germany also committed to accept 10 thousand Syrian refugees with temporary resident status. However, many experts believe that these policies are contradictory to the trend of anti-immigration sentiment, gaining ground in many European countries. "The backdrop to this [migrant crisis] is the difficulty that many European countries have in integrating minorities into the social mainstream. Many of these immigrants are coming from Muslim countries, and the relationship between immigrant Muslim communities and the majority populations is not good," former Council on Foreign Relations senior fellow Charles Kupchan said."<sup>7</sup>

The recent economic crisis has also prompted a demographic shift in the entire continent, through the citizens of the most affected countries who immigrate in large numbers to the north in search of a job. In the meantime, when the issue of immigration into EU has caused distress on social welfare benefits in recent months, "those who came from Middle East and North Africa tend to provoke the most heated political debate, due to the differences between the fragmentation of local government and integration," Kupchan said. What are the main proposals for crisis management? Driven by the unprecedented number of migrant deaths at sea this month, the EU approved an expanded 10-point plan to stem the tide of immigrants and asylum seekers across the Mediterranean. However, some critics claim that the goals of this plan only hit the smugglers, not being able to face the huge problem of failed countries in Middle East and Africa and leaving no other option to the citizens, but leaving. European Commission President Jean-Claude Juncker was also

---

<sup>7</sup> E. Hobsbawm, *On History* Abacus, London, 1998 p.335.



quick in exposing that the plan will require funding from all Member States. The expected differences between fragile coalition governments could slow implementation of any new policy measures. Besides this, the European Parliament voted in favor of creating a framework for a common European system of asylum in June 2013. However, implementation and enforcement across the 28-member bloc remains a challenge, and many policymakers say the legal framework lacks clarity, and still gives member states too much leeway.

## **9. Immigration is an issue that strikes at the heart of sovereignty**

Immigration is an issue that strikes at the heart of sovereignty. It has to do with national identity, economic competitiveness and security, so it is not surprising that governments are not willing to concessions on this topic.<sup>8</sup>

While most member states of the EU have generally been opened to recommendations for enhanced maritime patrols on the Mediterranean, and the adoption of technology and sharing of media, there was less agreement to initiate policies, which guarantee rights of asylum seekers and migrants. Experts say that any movement on immigration reform will be difficult, as the nationalist parties across the continent are gaining continuously ground, and on the other hand there is a greater threat of European jihadists, who are returning home from the Middle East and North Africa. This is another issue that continues to affect public opinion.

## **10. What are the possible consequences of an inadequate response by the EU?**

The lack of a coordinated response by the European Union to immigration from the Middle East and Africa is an evidence of different ways through which individual countries continue to view the issue through the lens of national security, rather than international defense.

---

<sup>8</sup> Said Conley from CSIS.

The political response by the countries of the Union, by expelling immigrants or imprisoning them for a long time contradicts many of the values that the EU promotes, as the protection of life and the right to asylum. In addition, it fears that by undermining the core values of the EU, it may also affect the risk that the sustained influx of migrants could spur more member states to suspend the Schengen Agreement, as did Denmark and France in 2011 for travel in longer stretches of time.

“I suspect if the politics surrounding migration really start getting messy, you'll see countries reintroducing internal borders with greater frequency, which means they would have chiseled away at one of the main pillars of Europe, which is the free movement of people,” said Conley.<sup>9</sup>

---

<sup>9</sup> Council of Foreign Affairs/ a.g./Bota.al