

*Mariia Mykhalko,
Master student of Faculty of Law,
Mykolas Romeris University in Vilnius*

MIGRANT CRISIS IN EUROPE: PROBLEMATIC ISSUES

***Анотація.** Події навколо «кризи мігрантів», яку нині переживає Європейський Союз, важливі для України не лише з огляду на пріоритет європейського вектору її зовнішньої політики, а й тому, що, по-перше, Україна зіткнулась зі схожою проблемою біженців з зони АТО та іншими міграційними процесами, які є однією зі складових регіональної політики, по-друге, «мігрантська криза» вже в найближчій перспективі вплине на ставлення ЄС до механізмів урегулювання на Сході України, по-третє, криза демонструє механізми взаємодії регіонів ЄС в процесі розв'язання гострих спільних проблем.*

У цьому матеріалі автор виокремлює чотири правові аспекти «кризи мігрантів», а саме проблеми статусу мігрантів, заходів з розв'язання кризи, розподілу відповідальності членів ЄС, дотримання прав людини. Зокрема, звертається увага на різний зміст статусів «мігрант» та «біженець» та акцентується на доцільності використання статусу «мігрант». Стверджується, що, попри часту демонстрацію багатьма членами ЄС домінування національних інтересів над загальноєвропейськими, існує тенденція до інституціоналізації спільної міграційної політики.

Recently an attention of world's society is focused on outstanding phenomenon, the growing humanitarian brunt which nowadays takes place in Europe. It is called «migrant crisis» or «refugee crisis». Europe has now become a «continent of immigration» [17, p. 3]. This issue is lively debated on the international level. A wide range of international organizations, governments and authorities are engaged into. But on the other hand the topic is completely new and this fact causes lack of scientific publications in mentioned area. Of course, there are already some researches and scientific works in this area but non of them is complex. For instance, there are some general researches focused both on reason, consequences of the issue and provided measures made by Maurizio Albahari [16]. There are researches in the sphere of policy concerning migrant crisis made by Peter Scholten and Frans van Nispen [17]. Some of scholars touch an issue of human rights and healthcare such as Alfredo Morabia, Georges C. Benjamin [1] and Guy S. Goodwin-Gill [12]. But all of publications are more or less concentrated on measures provided by European Union and its duties concerning mentioned issue. Also there are works specialized exactly on this side of the topic. For example, these are publications of Phillipe Fargues [18], Andreia Ghimis [13], Yves Pascouau [22], Kristiana Eleftheria [15] and so on. The reason is absolutely understandable. This is the problem which requires urgent solutions, political decisions and legal measures. All the news web-portals are overflowing by information concerning migrant crisis, some scary statistics, alarming about the need of urgent solution. That's why researches in the area of governmental

measures are so important. As for me, doctrine has always been some kind of inspiration to lawmakers and led them on the right and progressive way. So the issue of European migrant crisis is not fully revealed by science and really worth exploring. Researchers in different spheres of studies (lawyers, sociologists, economists and others) should help this problem to be solved. It is easy to notice that now the European Union bodies are in a position of powerlessness and confusion. The European Union authorities were not prepared to such disaster [3, p. 1].

In the last years the flow of migrants to Europe heavily increased. The nowadays refugee crisis according to scholar analyze was revealed in 2014 [16, p. 1]. The terms «European migrant crisis» and «European refugee crisis» were not widely used until April 2015, when five boats carrying almost two thousands migrants to Europe sank in the Mediterranean Sea. As a result more than 1,200 people died. Than this notion was spread by BBC and now is widely used [4].

Main flows of illegal migrants come from Middle East, Africa and South Asia. The number of board-crossers started increasing in 2011, as thousands of Tunisians started to arrive at the Italy after the beginning of the Arab Spring. Sub-Saharan Africans who had previously migrated to Libya followed in 2011–2012, running away from the clutter caused by era of Kaddafi. The most recent spate of migration along the EU's maritime borders has been attributed to the growing numbers of Syrian, Afghan, and Eritrean migrants and refugees [14].

According to the information given by the United Nations Refugee Agency in 2015 752,072 people came to the European Union via the Mediterranean and 3,440 of them died or went missing in the same period (on the 5th of November 2015). Also the Agency points that the biggest part of migrants in 2015 is people from Syrian Arab Republic (52%) [19].

Undoubtedly, this is one of the most significant events in the history of human migration. But it is worth to be said that this phenomenon is not homogeneous but rather complex of issues. And to solve such a global problem it must be approached from different angles.

The first question which should be answered is «Who are these people? What are the purposes of the migration?» [4]. In general it is quite easy to answer – they all are migrants – persons who leaves one country to settle permanently in another [20]. But in fact this is not enough. Anyway everybody has different reasons for migration. And it is important because of legal status of such people. Because status, for example, of refugee and labor migrant differs.

A lot of mistakes are caused by misunderstanding of journalists. For instance, in this case news website al-Jazeera has decided it will not use migrant and «will instead, where appropriate, say refugee». There are some who dislike the term because it implies something voluntary but that it is applied to people fleeing danger [4]. A UN document called Measures to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers suggests: «The term “migrant”... should be understood as covering all cases where the decision to migrate is taken freely by the individual concerned, for reasons of “personal convenience” and without intervention of an external compelling factor» [5]. A refugee, according to the

Convention Related to the Status of Refugees, «is any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country» [21, p. 1]. So it would be wrongly to say that all people who now migrate to Europe across Mediterranean have the same motives and purposes. This makes the work for the European Union even harder because there is a risk of substitution of notions and mixture of legal status. This is the issue of time, money and other resources.

As some of migrants manage to travel further from the South to North Europe, the governmental agreement is that «economic migrants» should be repatriated. Also European Union commitments include more severe procedures to detain, identify and deport those who are not in need of protection. This is complimented by a military operation in the Mediterranean «to dismantle traffickers» networks and fight smuggling of people' and by more funding for EU search and rescue and border enforcement [16, p. 2]. «Whether this is defined as migration or a refugee crisis is important: they have to pass the right message to the public, that they are neither dealing purely with refugees or purely economic migrants. It is a mixed flow of people. This gives Europe certain responsibilities from a legal, moral and political point of view, which is a continent still perceived in the world as the champion of human rights. However, this relies on how these are applied on own territory» – Federica Mogherini (Vice-President of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy) [8].

All the people who come to European Union, according to international legislation, can't be automatically regarded to be refugees; they need to go through a formal procedure [21, p. 14]. Moreover, except of migrants and refugees, there is one more notion «asylum seeker».

An asylum seeker is defined as a person fleeing persecution or conflict, and therefore seeking international protection under the Convention Related to the Status of Refugees; a refugee is an asylum seeker whose claim has been approved. However, the UN considers migrants fleeing war or persecution to be refugees, even before they officially receive asylum. (Syrian and Eritrean nationals, for example, enjoy prima facie refugee status.) An economic migrant, by contrast, is person whose primary motivation for leaving his or her home country is economic gain. The term «migrant» is general. All refugees are migrants, but not all migrants are refugees.

So if we speak about mentioned crisis, it's more correctly to use the word «migrants».

The second one is those measures which are provided for elimination of the crisis. And here the topic can be divided again: on measures taken by the EU and measures taken by home countries of migrants. Recently the European Union began emphasizing that not only it should be responsible and care about incoming migrants, but also home countries of migrants and also third countries should share responsibility in this situation. As it was said above, the European Union was not ready to such an accident. But in reality the main reason is that human rights

protection and welfare of people is not just a challenge for the European Union but also for the whole world. And such an emergency should engage as much states as possible to solve it. It is time to convene an international conference, perhaps on a rolling basis, for this is not a one-off situation. It is time to draw on the knowledge and experience of the United Nations; on the UN High Commissioner for Refugees; the UN High Commissioner for Human Rights; the Emergency Relief Coordinator and the Office for the Coordination of Humanitarian Affairs; the Special Rapporteur on the Human Rights of Migrants; the UN Development Programme; the UN Children's Fund; the World Health Organisation; the International Maritime Organisation [12].

As Elmar Brokk (Chair of the Committee on Foreign Affairs) said during the Parliamentary debates concerning migration and human rights: «There are camps around Syria and Iraq which are symmetrically underfinanced, he continued, and the World Food Programme has been reduced by 40% in 2015. This means that people are not being properly looked after and not even getting enough food. The EU is ready to do considerably more for humanitarian reasons, but Member States' budgetary plans for international relations with third countries are being seriously cut. Perhaps this will be reconsidered given the scale of the current crisis, as they must respond to the urgent need faced by these people» [8].

But on the other hand it doesn't seem like the European Union tries to get rid of responsibility for incoming migrants. The EU has to move towards a more complex and structured approach to migration.

Different Directorates General of the European Commission contact more frequently concerning topics related to migration: DG Migration and Home Affairs, DG Development and Cooperation, DG Neighbourhood and Enlargement Negotiations, DG Trade and DG Agriculture and Rural Development. Federica Mogherini, from her side, has also notably taken part in the refugee crisis debate [3, p. 4].

Also the European Union has a serious approach to the issue of financing of all appropriate measures [9]. Moreover the Frontex is heavily engaged. This is an organization within the European Union which fosters the free movement of people which is an important objective of European integration. The main aim of the Frontex is to promote, coordinate and develop European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management. It was established by Council Regulation (EC) 2007/2004 (26.10.2004, OJ L 349/25.11.2004) [6]. So the European Union tripled their presence at the sea, increasing three fold the resources and assets available for Frontex Joint Operations Poseidon and Triton. Over 122,000 lives have been saved since then. Every life lost is one too many, but many more have been rescued that would have been lost otherwise – an increase of 250% [10].

So as we can see the European Union can't be accused in the inaction. But anyway the international support is also much needed in nowadays conditions.

The third issue to be discussed also concerns measures provided by the European Union. This is the problem of sharing responsibility for mentioned crisis between Member States.

Europe is currently discussing burden-sharing, or «responsibility-sharing» between those Member States that are exposed by geography to irregular entries, and those that are not. While this discussion will be crucial to improve the Common European Asylum System. Countries of first asylum in the Eastern Mediterranean are under extreme pressure due to the massive amount of refugees and the burden they have on housing, food, water, schools, hospitals, etc. not to mention security and the social order [18, p.3].

But on the other hand member states in some way have illustrated their inability to move away from narrowly defined national interests and embrace a possible solution to the humanitarian crisis at the only possible level, the European Union. National agendas and decisions continue to prevail [22].

Moreover, many Member States cling to ideas of Dublin Regulation. (Regulation No. 604/2013) It is a European Union law that determines the EU Member State responsible to examine an application for asylum seekers seeking international protection under the Geneva Convention and the EU Qualification Directive, within the European Union. According to this law the country that the asylum seeker first applies for asylum is responsible for either accepting or rejecting asylum, and the seeker may not restart the process in another jurisdiction. Moreover, if the asylum seeker tries to travel further via Europe, he should be deported to the first state he arrived to. One of the main aims of the Dublin Regulation is to prevent an applicant from submitting applications in multiple Member States [7].

But in the conditions of migrant/refugee crisis this directive makes border countries to feel an extreme pressure on them. Cause more and more migrants arrive and according to the law, should stay there.

Many policymakers agree that reforming the Dublin Regulation is an important step to establishing a common European Asylum policy. Under the current system, the burden of responsibility falls disproportionately on entry-point states with exposed borders. In practice, however, many of these frontline countries have already stopped enforcing Dublin and allow migrants to pass through to secondary destinations in the north or west of the EU. Germany and Sweden currently receive and grant the overwhelming majority of asylum applications in the EU [14].

So, all over the European Union there are debates about sharing the responsibility. But this problem can't be solved immediately because some European countries are against quotas for migrants and to make some proper decision without support of Member states is impossible.

The fourth side of migrant crisis is an issue of human rights protection in conditions of recent happenings. It's obvious that in conditions of almost uncontrolled and unexpected migration there can take place violations of human rights. International human rights instruments and the European Convention on Human Rights enshrine and enforce rights which are of general application. Non-compliance with the conditions for entry, stay or residence in a European Union (EU)

Member State cannot deprive migrants in an irregular situation of certain basic rights shared by all human beings [11, p. 7].

In support of this, for instance, one of the most famous human rights international organizations Human Rights Watch stands. They say that the EU should sustain robust search and rescue operations in the Mediterranean and expand safe and legal channels into the EU, including by increasing resettlement quotas, wider access to humanitarian visas, and facilitating family reunification. EU countries should ensure more equitable responsibility sharing for asylum seekers, and implement common EU standards on reception conditions and asylum procedures [13]. All these measures are aimed to the fulfillment of human rights.

Moreover in the Internet there is an Open Letter to the Governments of Europe in which volunteers ask governments of the European Union to take measures to ensure human rights of migrants [2]. This anonymous letter is supported by wide range of organizations and great amount of ordinary people. And this indicates that real problems with human rights protection exist and undoubtedly, there is a need of urgent solution.

So as a result, we can see that issue of migrant crisis in Europe is very wide and almost unstudied. In this work I tried to indicate those areas which should be researched in the scopes of mentioned issue. First of them is a status of those migrants. The second one is measures taken by the EU, home states of migrants and world's society. The third one concerning share of responsibility between EU Member States. And the last one touches problems in human rights protection.

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