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IRREGULAR MIGRATION: NEW CHALENGES AND ISSUES

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Abstract*. This article presents actualities of issues of migration. Migration is a highly discussed and contested issue in most transit or destination States. The analysis of current trends in migration leads to the conclusion that this issue increased in the last decade and have tendencies to continue in near future. It means that more people will decide to change their place of living, and every country will become a source of transit or final destination of migration. Migration processes taking place within state borders. Control of national borders is seen as an essential aspect of the sovereign State.*
States adopt increasingly restrictive rules, same times fueled by popular hostility to immigrants. The main task, by using content analysis method is to show, that migration issues remain important in today's context and require continuous focus and adaptation of common instruments to manage migration flows. As illustrative example was taken data collected by Frontex.

Keywords: *migration, irregular migration, illegal migration, migration flows.*

Introduction

The European Union has become one of the most important destinations for migration movements, resulting in a serious debate among Member States on migration control and prevention on irregular migration. Migration patterns differ widely among Member States. Reasons for this are the history of colonialism, recruitment of migration workers policies, national differences in the recognition of asylum seekers, and geographical facts.

Migration, forced displacement and flight have been part of human experience from the earliest times (Mol & Walk, 2016). From a human rights perspective, migrants, people displaced within their own countries (internally displaced persons) and refugees are groups that require special protection because they have been deprived of the security normally enjoyed by people who can remain in their homes. Movement of persons can be voluntary or coerced and can occur within a person's own country or across international frontiers. Four distinct groups of people in need of human rights protection may be derived from combinations of these elements:

1) those who leave their homes voluntary for economic, family-related, or other reasons to settle elsewhere within their country;

2) migrants, i.e. those who move to another country for the same reasons;

3) internally displaced persons, i.e. those who are forced to leave their homes to seek refuge in another part of their own country;

4) refuges, i.e. those who are forced to seek protection against persecution by fleeing abroad. (European Commission, 2009).

In principle, states are free to exercise their territorial sovereignty in regulating the entry, residence, and departure of foreigners. However, this freedom of action is limited not only by bilateral treaties and EU provisions concerning the free movement of persons but also in

specific cases by human rights such as the prohibition of discrimination or the right to family reunification (Kälin & Künzli, 2009).

Spaces of Freedom, Security and Justice reinforcement

To create an area of Freedom, Security and Justice is one of main priorities tasks of the Europe's Union. Its importance has increased significantly in the last decade. The role of the European Union in creating harmonized external border control has also strengthened immigration and asylum policy and policing, customs and judicial enforcement cooperation (Seniutienė, 2021).

The human right to free movement is defined of United Nations in the "Universal Declaration of Human Rights" at 1948. It states "Everyone has the right to freedom of movement and residence within the borders of each State" and "everyone has the right to return to and from any country, including his own."

Freedom of movement and residence for persons in the European Union is the cornerstone of EU citizenship, established by the Treaty of Maastricht in 1992. The gradual phasing-out of internal borders under the Schengen agreements was followed by the adoption of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU.

The free movement of persons was the conclusion of the two Schengen agreements, i.e. the Agreement proper of 14 June 1985, and the Convention implementing the Schengen Agreement, which was signed on 19 June 1990 and entered into force on 26 March 1995. Initially, the Schengen implementing Convention (signed only by Belgium, France, Germany, Luxembourg and the Netherlands) was based on intergovernmental cooperation in the field of justice and home affairs. A protocol to the Amsterdam Treaty provided for the transfer of the "Schengen acquis" into the Treaties. Today, under the "Lisbon Treaty", it is subject to parliamentary and judicial scrutiny. As most Schengen rules are now part of the EU acquis, it has no longer been possible, since the EU enlargement of 1 May 2004, for accession countries to 'opt out' (Article 7 of the Schengen Protocol).

The free movement of persons is guaranteed in the Schengen area territory (Bendson & O'Reilly, 2015). Single external border checks and common rules were created in line of control between each of Member State. Apart from external borders, rules and procedures with regard short stay visas and asylum request were established too. Moreover, simultaneously in order to achieve appropriate level of security compensatory measures were provided. The Schengen acquis was incorporated into the EU legal framework by the Amsterdam Treaty in 1997.

The European Union policy in the area of justice and home affairs was developed since the 1999 European Council meeting in Tampere, under the general program. Although not all program objectives have been met, but significant progress has been made. Contribute general immigration and fundamentals of asylum policy, coordinated border control, strengthened police cooperation, as well as cooperation on internal security and criminal policy in the field.

Next step was Hague Program approved by the European Council. This a multi-annual work program providing for actions to strengthen border protection, combating trafficking people and illegal recruitment, ensuring the return of migrants and cooperation with third countries. The Hague Program includes all with an area of freedom, security and justice aspects of related fields, i.e. citizenship and fundamental rights, asylum and immigration, borders governance, integration, the fight against terrorism and organized crime, etc.

The tasks outlined in the Hague program and its action plan correspond to Lithuania's aspirations. The provision of the program regarding the sharing of responsibility and the financial one is particularly important for Lithuania the principle of solidarity when deciding on migration policy and the external borders of the European Union security issues.

It is likely that the main policy directions of the European Union in the field of freedom, security and justice established in the Hague Program, especially related to the improvement of the management of migration flows, exchange of information, cooperation and crisis management, remain relevant in the next decade. However, it is understood that the priority tasks will have to be reviewed and adjusted. The Hague Program is designed to solve cross-border problems with full respect for the fundamental rights of national citizens. Its objectives are as follows:

- to strengthen the joint capacities of the European Union and its member states, guaranteeing fundamental rights, the necessary procedural safeguards and the right to go to court;
- in accordance with the Geneva Convention on the Status of Refugees and other international agreements to provide protection to persons who need it;
- regulate migration flows and control the external borders of the European Union;
- fight against organized cross-border crime and suppress the threat of terrorism;
- to use the potential of Europol and Eurojust;
- to recognize court decisions and certificates in civil and criminal cases;
- remove legal and judicial barriers to litigation in foreign-related civil and family matters.

Through the Hague Program, the European Union has implemented its visions in the following areas: access to justice, international protection, migration and border control, terrorism and organized crime, police and judicial cooperation and mutual recognition.

Further priorities determined in the next multiannual Stockholm program and the European Union 2020 strategy taking into account achievements.

It should be noted and emphasized that in the last decade, the cooperation of the member states in the above-discussed issues also started to play an important role. The Frontex, as agency also plays an important role in border security issues as a coordination unit, especially after migration crises in 2015.

Irregular or illegal migration?

Irregular migration understandable as movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.

As defined by the European Commission, there is no universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorisation or documents required under immigration regulations. From the perspective of the sending country, the irregularity is, for example, seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country.

There is, however, a tendency to restrict the use of the term to cases of smuggling of migrants and trafficking in human beings.

Defining irregular migration has been the subject of considerable debate. Terms such as illegal, undocumented, non-documented, and unauthorized migration can have different

connotations in national policy debates. Due to this and the association with criminality the term 'illegal migration" should be avoided, as most irregular migrants are not criminals. Being in a country without the required papers is, in most countries, not a criminal offence but an administrative infringement (European Commission, 2019).

While the UN use the term 'irregular' or 'undocumented' migration, the European Commission favoured for a long time the term 'illegal immigration', but more recently refers to 'irregular migration' as well.

The Council of Europe differentiates between illegal migration and irregular migrant. Referring to Resolution 1509 (2006) of the Council of Europe Parliamentary Assembly, 'illegal' is preferred when referring to a status or process, whereas 'irregular' is preferred when referring to a person.

Migration flows: situation and tendencies

In the last decade, migration phenomenon has become one of the most discussed and contested issues (Abel, 2010). in European Politics. After the "migration crisis" of 2015, when Europe saw an unprecedented amount of people seeking refuge at its shores and physical borders, the pressure on the European Union to restrict access to Schengen territory grew drastically. The physical border practices of the EU have grown increasingly more repressive and the possibilities for migrants to access asylum processes.

Increased migration flows in 2015 exposed the shortcomings of the EU asylum system and forced the EU to take appropriate action. The European Parliament sought to improve it by proposing reforms to the Dublin system, which determines which country is responsible for examining an asylum application. In 2020 September 23 the European Commission has presented a new Pact on Migration and Asylum , which aims to replace and improve current procedures by ensuring shared responsibility and solidarity. The Parliament also participated in the preparation of new management measures to combat illegal immigration and stricter border control. The Parliament also contributed to the preparation of a more effective system for collecting and storing information on persons who have arrived in the EU.

However, the same question always remains whether these measures are sufficient, effective and in a timely manner?

According statistical data collected by Frontex, Member States reported a total of 87 485 detections of illegal border-crossing on the green borders in 2021, the highest reported figure since 2016. This is a 124 % increase on 2020 and a 146 % increase on the pre-pandemic year, 2019. However, a substantial part of this growth was due to detections of repeated attempts on the Western Balkan route. At the Western Balkan borders, an increasing trend of reported IBCs by migrants who are being allowed visa-free entry to select Western Balkan countries, has been registered (Frontex, 2022; IOM, 2022).

While in 2020, these nationalities were responsible for just over 400 IBCs, their numbers grew in 2021 to over 3 000 (consult Figure 1). According to Europol, facilitated crossings of the green borders on foot either occurred with the people smugglers accompanying the irregular migrants, acting as local guides, or the people smugglers providing instructions to the migrants remotely. An outsized share of 60 599 illegal border-crossings on entry were reported on the EU's borders with Serbia (69 % of all crossings at the land borders) (Europol, 2022; IOM, 2022).

Joining the ranks of the most used land routes was the Belarusian border, which reported significant detections (7 528) for the first time since data collection records commenced. At the EU's land borders with Turkey, the number of arrivals (5 692) was similar to 2020.

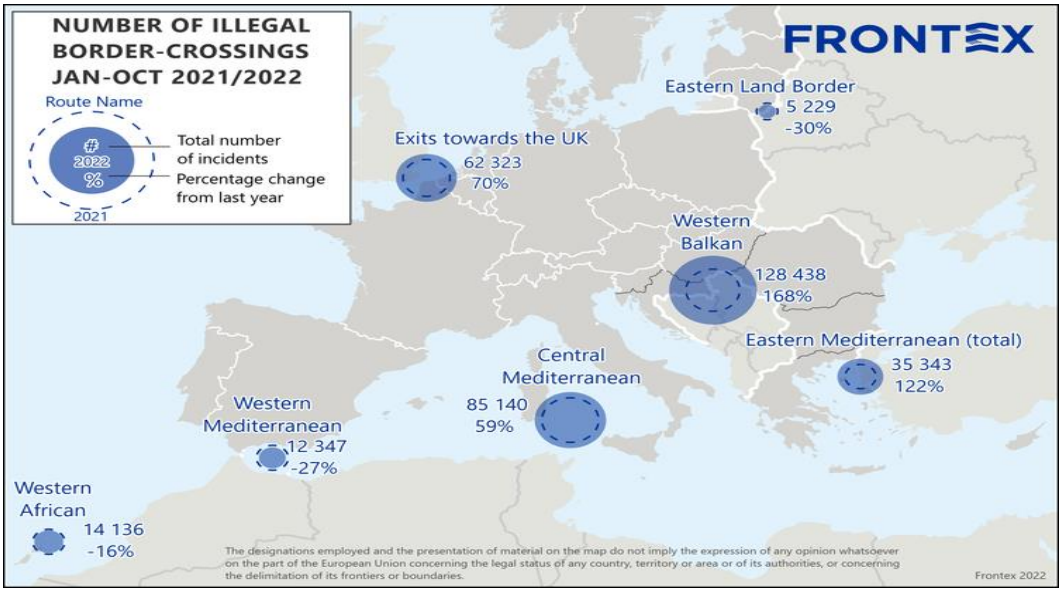

Figure 1. Illegal border- crossings, 2022
Source: FRONTEX, 2022

Belarus' abrupt decision to cease cooperating on border management and its aggressive instrumentalisation of migration in a hybrid campaign were the most significant developments at the external land borders in 2021.

Let's evaluate the case of Lithuania after the adopted measures. 2021 for Lithuania was an exceptional year recording the number of migrants, and especially the number of illegal migrants. Since Lithuania is an external state of the EU, it was an exceptional year for the all EU. Comparing the statistical data of 2020 and 2021 on the Lithuanian-Belarusian border in 2021 23 times more migrants tried to cross than in 2020. It was not an ordinary migration crisis, it was a purposeful act of hybrid aggression against Lithuania. Almost 4.2 thousand migrants arrived illegally from Belarus to Lithuania (consult Figure 2). Lithuania calls this influx of migrants from Belarus a hybrid attack by the Minsk regime and accuses it of organizing illegal migration.

Illegal migrants in Lithuania by nationality, 2021 (as of 9 November 2021)			Illegal migrants crossing the Belarus–Lithuania border	
Nationality	Region of origin	Number	Year	Number
Iraq	Western Asia	2,811	2015	280[59]
Republic of the Congo	Central Africa	204	2017	72
Syria	Western Asia	147	2018	104
Cameroon	West-Central Africa	134	2019	46
Afghanistan	South-Central Asia	101	2020	81[100]
Russia	Eurasia	93	2021 (June)	470[50]
Belarus	Eastern Europe	91	2021 (late July)	ca. 2,600[50]
Iran	Western Asia	87	2021 (by 7 August)[101]	4,112
Other		444	2021 (by 9 November)[101]	4,220
Total	**4,220**			

Figure 2. Illegal migrants crossing the Belarus-Lithuanian border, 2021
Source: FRONTEX, 2021

In the case of Lithuania, the current international, regional and national legal regulation could not offer any instrument for the control and prevention of irregular migration flows, therefore it was necessary to introduce a separate regime and propose amendments to national legal acts, so that officials of state institutions could properly fulfill the functions assigned to them, that is, to protect the state border and ensure public safety. As a result, a state of emergency was introduced, the Law on the Legal Status of Aliens was changed, and the policy of reversal was introduced.

If to look in perspective for 2022/2023 it will likely see an increase in migratory pressure at the land borders. Some of this pressure will be the ordinary knock-on effect of increased pressure on sea routes (e.g., traffic on the Eastern Mediterranean route leading to more secondary migration via the Western Balkans). Significant lingering political risks (low likelihood/very high impact) remain in the Western Balkans (Frontex, 2022).

Russia's aggression on Ukraine has in the subsequent months resulted in the orderly crossing of millions of Ukrainian refugees via BCPs into the EU. The EU's Temporary Protection Directive has been activated for the first time. As it was mostly vulnerable groups (women, children and the elderly) comprising this refugee inflow, challenges to protect those vulnerable groups of size have arisen and may well rise again.

The protraction or potential escalation of the conflict in the east, as well as the impact of Western sanctions acting as economic push factors, could impact the EU's land borders with Russia.

The impact may materialise in the form of illegal border-crossings (or via other means, for instance by using document fraud when leaving Russia).

In addition to the above-mentioned measures, again taking in account case of Lithuania, the installation of a physical border protection barrier has also begun - the construction of a physical fence has begun. The physical barrier between Lithuania and Belarus began to be built after the dictator-led regime of the neighboring country organized an influx of illegal migrants to Lithuania. Various measures have been taken to prevent migrants from entering the territory of Lithuania, and if migrants do enter Lithuania, to return them to the territory from which they crossed the border, that is, to Belarus. In other words, migrants trying to enter the territory of Lithuania illegally are not allowed, and they are instructed to cross the border through border

points, as stipulated in the Law on the Status of Foreigners. The law stipulates that an asylum application can only be submitted at border checkpoints after legal arrival or at Lithuanian embassies abroad.

As asserts Frontex, concerning developments in some countries of origin, the situation in Afghanistan under Taliban rule remains of great concern. This is not an exclusive concern for land borders, although 82 % of all IBCs of Afghans in 2021 were recorded at the land borders. Available data indicate that Afghans largely flee to neighbouring countries, mainly due to their geographic proximity and linguistic and religious similarities, as well as migrants' lack of financial resources. The precarious situation in Afghanistan, where the Afghan banking and financial systems are close to collapse while the economy continues to freefall, could lead to a further outflow of migrants (Frontex, 2022; IOM, 2022).

This would add to the pressure on Afghanistan's neighbours, who are increasingly demanding the international community share responsibility for managing migration flows. In view of the strengthening of border management at important border sections on the established migration routes from Afghanistan to Europe, it is conceivable that new migration routes to the external borders of the EU will form.

The rise in the number of asylum applications lodged in EU Member States by Afghan nationals towards the end of 2021 is likely foreshadowing a trend.

Syrians are another top nationality detected for irregular migration at the land borders. In Syria, violence continued throughout 2021 and hostilities havere-intensified. In January 2022 the Islamic

State conducted its largest attack since 2019 amid ongoing insecurity in north-west Syria, suggesting that the security situation will likely continue to be volatile.

This comes on top of Syrian economic woes and the failure to make any breakthroughs towards peaceful reconstruction. In 2021, the number of asylum applications lodged by Syrian nationals in EU Member States was over 70 % higher than in 2020 and almost 50 % higher than in 2019 (Frontex, 2022; IOM, 2022).

Beyond Afghanistan or Syria, developments in many other countries of origin are pointing towards increased migratory pressure on Europe: Ultimately the route chosen – be it over the external land or sea borders – will be determined to a large degree by migrants' cost-benefit analysis under imperfect information. In addition to the migration routes supplied by people smugglers, migration movements caused and organized by state actors in third countries will create new challenges in the future.

Conclusions

The Member States, with the help of Frontex or other EU agencies must collect not only illegal border-crossing facts, but also to **collect, analyse and use of credible data** and information on, among other things, demographics, cross-border movements, internal displacement, diasporas, labour markets, seasonal trends, education and health is essential to create policies based on facts, that weighs the benefits and risks of migration.

National, Regional and International cooperation, can help minimize the negative consequences of migration and preserve its integrity. Especially when the EU Treaty enables law enforcement and other institutions to cooperate through the most diverse means and channels.

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