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The Eastern Borders of the European Union in the Field of Migration

Migration is a dignity seeking journey
*Francois Crepeau***

Abstract

The paper explores the characteristics and the significance of the European Union's eastern border in regular and irregular migration processes considering that migration is on the top of the European Union's agenda as well as of the United Nations. It focuses on problematic and positive aspects of migration issues at the eastern border of the European Union. The investigation pays attention to European acts on migration policy and law, eastern border countries and neighbours of the European Union; it analyses dimensions of the European Union's eastern border, migration challenges of the eastern border route, enhancement of migration management at the eastern border through the use of diverse instruments such as the European neighbourhood policy, the Eastern Partnership, the European Union–Russia relations, the Global Strategy for the European Union's Foreign and Security Policy and the Eastern Borders' Risk Analysis Network. Migration at the eastern border of the European Union is also marked by the concepts of "Schlechtegranzen" and "Rechtegrenzen". The results and conclusions point out relevant issues that are peculiar to the eastern border of the European Union in terms of migration challenges and migration management.

Key words: European Union, EU eastern borders, eastern migration route, migration management.

JEL Classification: Y80, K37.

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Introduction

Human migration has evolved at high rates in scope and complexity by affecting countries all over the world, including the European Union and its Member States. Migration is on the agenda due to its connection to development, and both are considered together as a complex equation. Even if it is difficult to establish a clear-cut relationship between migration-development causes and effects, some links can be identified by considering the importance of labour force, the impact of remittances, the place and the role of highly skilled migrants, the issues on human rights, especially of female and child migrants and potential climate changes. As a UN report reads, international commitments to migration problems have been reluctant considering "(i) a lack of national data and indicators, (ii) migration being a fragmented portfolio falling under the responsibility of various government departments and (iii) migration being a politically sensitive issue, often leading to a focus on border management and control rather than international development" (IOM, UNDESA 2012: 11). In large it follows Ernst Georg Ravenstein's laws on human migration which were elaborated a long time ago and state that migration generates counter migration; there are urban and rural differences in migration; migration and technology are interrelated; migration is an economic condition. As shown the world has not changed too much in the way it is perceiving and addressing migration.

The European Union faces challenges both at intra- and external community levels in terms of migration. If intra-level migration is regulated and the freedom of movement works, on the one hand, immigration still would have the characteristics of the Achilles' heel, on the other hand, Member States would display divergent visions on it, irrespective of the quantity, the quality and the geographical routes.

It is worth mentioning that migration flow numbers through *Eastern Borders Route* are lower in comparison to other routes, speaking about legal and illegal movement of people to the European Union. However, this numeric illusion hides behind it two important aspects: the *challenging aspect* refers to sophisticated methods used by migrating networks and the *positive aspect* is characterized by qualitative border management monitoring. The concern is the challenging aspect comprising of migrants' countries of origin and transit (sometimes it is quite difficult or impossible to make a clear distinction between countries of origin and transit due to cultural, linguistic heritage in the East or fraudulent documents). For instance, out of the 997 total number of illegal crossings between January–December 2018, among top 5

migrants' countries of origin are identified the following: Vietnam (370), Iraq (90), Russia (82), Ukraine (82) and Turkey (66), according to Frontex data. But the list of the countries is much longer (for the same year): Afghanistan, Algeria, Angola, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bolivia, Cameroon, Central African Republic, China, Congo, Congo Democratic Republic, Côte d'Ivoire, Cuba, Djibouti, Ecuador, Egypt, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Haiti, India, Iran, Iraq, Israel, Japan, Kazakhstan, Kyrgyzstan, Lebanon, Liberia, Libya, Mali, Mauritania, Mexico, Mongolia, Moldova, Morocco, Myanmar, Nepal, Nigeria, Pakistan, Palestine, Papua New Guinea, Russia, Rwanda, Senegal, Serbia, Sri Lanka, Somalia, Sudan, Syria, Tajikistan, Togo, Tunisia, Turkey, Turkmenistan, United States, Ukraine, Uzbekistan, Vietnam, Western Sahara and Yemen.

The picture is quite diverse; and each migration case has behind it its own story. There are nationalities from all continents and from about 70 countries; this data are not to be neglected. Detections of illegal border crossings are very relevant for migration flows. This diversity leads to the conclusion that migration networks for this route are more active and competitive.

Taking into account the aforementioned aspects, the paper aims to examine EU policy acts, data and indicators on migration, referring to the eastern border of the European Union, near and not quite near neighbours in the eastern migration route, specific characteristics of migration processes at EU eastern border, and external measures meaning to regulate migration. The topic is motivated by the fact that the migration threat at the eastern border of the European Union seems to be too exaggerated in comparison with other existing migration routes. Data and indicators demonstrate that the degree of migration threat at the eastern border of the European Union is much lower than expected. The methods adopted to argue this are: description and analysis of legal acts of the European Union towards migration at the eastern border of the European Union; content analysis of studies and data concerning migration at the eastern border of the European Union; quantitative and qualitative analysis of migration data and indicators at the eastern border of the European Union; processing and interpretation of collected legal acts, data and indicators with impact on the eastern border of the European Union; and finally formulation of relevant and pertinent conclusions on the migration process at the eastern border of the European Union.

1. European Union Acts on Migration Policy and Law

The European Union has shared competence in matters of migration. There are many elaborated acts in the European Union that refer to regular and irregular migration issues with the aim of extending better control over incoming flows of people. The primary legal basis and competences of the European Union in migration are in the articles 79 and 80 of the *Treaty on the Functioning of the European Union* (TFEU). Article 79 (ex Article 63, points 3 and 4, TEC) reads:

1. "The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.
4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed" (TFEU 78–79).

Further article 80 reads: "The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle" (TFEU 79).

Later on, developments in primary law appeared. Two strategic acts need to be mentioned. The first, *the Global Approach to Migration and Mobility* establishes four pillars of the EU's relations with third countries on regular immigration and mobility, irregular immigration and trafficking in human beings, international protection and asylum policy, and maximising the impact of migration and mobility on development (GAMM 2011). And the second, the *European Agenda on Migration* – stands for saving lives at sea, targeting criminal smuggling networks, responding to high-volumes of arrivals within the European Union, a common approach to granting protection to displaced persons in need of protection, working in partnership with third countries to tackle migration upstream, using the European Union's tools to help frontline Member States. It also proposes measures in four policy areas: reducing incentives for irregular immigration, border management (saving lives and securing external borders), developing a stronger common asylum policy and establishing a new policy on regular immigration (EAM 2015).

A lot of legislative developments for regular immigration, integration, irregular immigration appeared recently: the first implementation package (2015) – on relocation, resettlement, action plan against migrant smuggling, fingerprinting, the future of the Blue Card Directive, new operational plan for Triton operation; the second implementation package (2015) – relocating 120 000 asylum seekers from Italy, Greece and Hungary to other EU countries, a permanent crisis relocation mechanism under the Dublin system, a European list of safe countries of origin, action plan on return, return handbook, procurement rules for refugee support measures, addressing the external dimension of the refugee crisis, a Trust Fund for Africa; Communication on Managing the refugee crisis (2015); Communication on Managing the refugee crisis: state of play (2015); managing the refugees crisis (2015) – European travel document for the return of illegally staying third-country nationals, hotspots in Greece, hotspots in Italy, temporary suspension of Sweden's obligations under the EU relocation mechanism, voluntary humanitarian admission scheme with Turkey; smart borders, asylum and legal migration (2016); the first

report on EU–Turkey statement (2016); managing the refugee crisis (2016) – state of play, Common European Asylum System: Dublin reform, Common European Asylum System: Eurodac, Common European Asylum System: EASO, Schengen, visa liberalisation; the third report on relocation and resettlement (2016); legal migration and integration (2016); managing the refugee crisis (2017); back to Schengen (2017); adapting the common visa policy to new challenges (2018); managing the refugee crisis (2018); visa information system (2018); European network of immigration liaison officers (2018); solidarity and management of migration flows (2018); Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (2018); EU budget for the future (2018); Kosovo – visa liberalisation roadmap (2018); managing migration (2018); state of the Union 2018 (2018); visa policy (2018); managing migration in all its aspects (2018); visa reciprocity (2018); visa liberalisation (2018); managing migration (2019).

As noticeable migration policy is a crucial issue on political agenda of EU institutions. The puzzle of harmonization (Givens and Luedtke 2004) still raises concerns in the national-supranational dialogue of competences and in the control-integration perspectives of immigration in the European Union.

Regulatory packages on migration refer to problem-based aspects. However, specific references to the EU's eastern borders are few. On the other hand, Elizabeth Collett, EU expert in migration and immigrant integration policy, considers it imperative to "invest in leadership", "improve coordination", "invest in human resources", "develop end-to-end monitoring and evaluation processes", "identify and utilize benchmarks for success that meet practical – and not just formal – standards and take specific, national contexts into account" (Collett 2015: 11) in order to produce stronger and more effective outcomes in the migration area.

2. European Union Eastern Border Countries and Neighbours

Even if the EU acts regulate migration policy very well, there are many issues related to immigration and the eastern border is not an exception.

EU border care follows the principle of hard borders, "immigration controls are no longer limited to the continent's territorial frontiers but extend both inside and outside the continent" (Carr 2012). The *hard border controls* may include:

- strict controls at EU borders, specialized detention centres across and beyond the European Union;
- pertinent 'post-entry' policies;
- 'upstream' controls by detecting unwanted immigrants before entering the European Union;
- neighbourhood partnerships by involving these countries in 'externalized' border controls of the European Union.

What are the *bordering countries* and *neighbours* in the *East*? The total eastern external border of the European Union is 5699 km in length. From the North to the South, the European Union has borderlines with Russia (Finland–Russia, Estonia–Russia, Latvia–Russia, Lithuania–Russia, Poland–Russia), Belarus (Latvia–Belarus, Lithuania–Belarus, Poland–Belarus), Ukraine (Poland–Ukraine, Slovakia–Ukraine, Hungary–Ukraine, Romania–Ukraine), and Moldova (Romania–Moldova).

Table 1: Eastern Borderlines of the European Union in km

Land boundaries	Russia	Belarus	Ukraine	Moldova	Total
Finland	1 309				1 309
Estonia	324				324
Latvia	332	161			493
Lithuania	261	640			901
Poland	210	418	535		1 163
Slovakia			97		97
Hungary			128		128
Romania			601	683	1 284
Total	2 436	1 219	1 361	683	5 699

Source: *Central Intelligence Agency 2019.*

The longest borderline is with Russia, then comes Ukraine and Belarus. And the shortest one is with Moldova. Belarus, Moldova and Ukraine are members of EU Eastern Partnership together with other three countries in the Caucasus: Armenia, Azerbaijan and Georgia.

The eastern border of the European Union represents a space of interrelated ethnic groups on both sides that are connected linguistically, culturally, and historically. Moreover, this part of Eastern Europe was the western border of the ex-Soviet space. As a consequence of historical changes, the eastern border of the European Union

may be seen as a door to larger Europe by Central Asian countries as well, if we refer only to illegal border crossings.

Is it all quiet on the eastern border of the European Union? What does the border divide?

3. Dimensions of Eastern Borders

The eastern border of the European Union is not just an ordinary border, it is a very complex border that can be viewed from political, cultural, civilizational and geopolitical perspectives as the border closes a space and creates differences on both sides due to its nature as a barrier. It is also a meeting point for some and others in the dialogue of border crossings.

The *political border* is between state entities, i.e. between the European Union and Russia, Belarus, Ukraine and Moldova.

As regards the *cultural border* it is extremely complicated to make a clear delimitation, considering that the political borders do not always correspond to identity/linguistic borders. Today's borders were shaped as the result of the Second World War. For instance, there are Finns living in North-Western Russia; Poles living in Belarus and Ukraine; Romanians, Hungarians and Slovaks living in Ukraine; Moldova, the second Romanian state, is outside the European Union; there are Russians living in Estonia, Latvia and Lithuania.

The *civilizational border* refers to interactions between the worlds with specific (different) stages of social development. For many, the eastern border of the European Union means the end of Europe, in other words, the border between civilizations.

Throughout history, the East was considered of "the barbarians", "the Mongols" or "the Russians", for example. Or in the vision of the Antiquity, the division between "the civilized world" and "the uncivilized world" that has lost its validity due to imprecise cultural borders, displaced people (of the Russians to the West, e.g. Estonia, Latvia and Lithuania) and re-moved borders (by the Soviets to the West as well, e.g. Belarus, Ukraine and innumerable annexations of Moldova).

The major concern is if the eastern border of the European Union would become a new wall, a new curtain between divided people in the East of Europe, as it is closely connected to dramatically different standards of living which will make migration persist for a long time.

The *geopolitical border* is seemingly to correspond to eastern border of the European border as "from the point of view of history and international relations, the analysis of border provides a very rich field for geopolitical expression in the area of Eastern Europe" (Marcu 2009: 410).

The eastern border of the European Union is a bridge between two geopolitical projects: Euro-Atlantic (the EU and the USA) and Euro-Asiatic (Russia). It is the most sensitive border of the European Union from the geopolitical point of view, supplemented by the cultural point of view, considering the division (fragmentation) of nations that live on both sides of the borders. It is worth mentioning that this fragmentation concerns (reaches) all border nations: Finns, Russians, Estonians, Latvians, Lithuanians, Poles, Belarusians, Slovaks, Hungarians, Ukrainians and Romanians. The most delicate situation is that of the Romanians living in two Romanian states (Romania and Moldova) and as a significant ethnic minority in Ukraine.

4. Migration Challenges on the Eastern Borders Route

According to Frontex, the map of migratory routes of the European Union is as follows: Western Mediterranean route, Central Mediterranean route, Eastern Mediterranean route, Western Balkans route and Eastern Borders route. The Eastern Borders route has specific challenges for border management.

The scale of *irregular migration* at eastern borders is much smaller than at other routes. The dynamics of illegal border crossings show reduced numbers in comparison to other migration routes: for instance, in 2008 – 1335, in 2009 – 1050, in 2010 – 1050, in 2011 – 1050, in 2012 – 1600, in 2013 – 1300, in 2014 – 1275, in 2015 – 1927, in 2016 – 1384, in 2017 – 872, and in 2018 – 1084 (the numbers are fair balanced excepting the pick of the crisis in 2015). Only a quarter of irregular immigrants are from eastern neighbouring countries (Frontex 2019a); others are from worldwide, especially from the Community of Independent States and Asian countries. Most of them crossed Polish-Ukrainian and Romanian-Ukrainian borders. For example, non-regional migrants from Afghanistan and Vietnam crossed the borders illegally. The route for Afghans was Hungarian-Ukrainian border and for the Vietnamese was the Latvian-Russian border. The Arctic route between Finland and Russia is also used by non-regional migrants, usually Afghans and Syrians.

What is more common for the eastern borders route is the *abuse of legal travel channels* rather than illegal crossings, chiefly by citizens of the Community of Independent States.

A significant challenge of the Eastern Borders route is *smuggling of excise goods*: cigarettes, alcohol, fuel and stolen cars (Frontex 2019a).

If we consider immigrants from the East (EaP, Russia and Central Asia), they are *economic migrants*. The most immigrants from the East (EaP, Russia and Central Asia) reside in Germany and Italy, followed by Spain, Poland, Czechia and the Baltic states. The top countries of origin are Russia and Ukraine with more than half of all immigrants (Dudzinska, Godzimirski, Parkes 2015). Another important migration issue is the *naturalization* process that is explained by pecuniary reasons.

Since 2016 the Eastern Borders Risk Analysis Network (EB-RAN) has been operating under the EU funded Eastern Partnership Integrated Border Management Capacity Building Project after all Eastern Partnership countries joined this initiative (Eastern Partnership members are: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine; EU Member States and Schengen associates are: Norway, Finland, Estonia, Latvia, Lithuania, Poland, Slovakia, Hungary and Romania). It performs regular exchanges of statistical data and information on migration issues in order to identify existing problems and emerging trends. *Inter alia*, the Eastern Borders Risk Analysis Network (EB-RAN) addresses seven key indicators for irregular migration (but not limited to them, when required):

- detections of illegal border crossing between BCPs;
- detections of illegal border crossing at BCPs;
- refusals of entry;
- detections of illegal stay;
- asylum applications;
- detections of facilitators;
- detections of fraudulent documents (Frontex 2018).

For exemplification of the exchange of statistical data between the Eastern Borders Risk Analysis Network (EB-RAN) during January–March 2018, the summary of selected EB-RAN indicators is presented below.

The numbers for above indicators are quite diverse for eastern borders and all EU borders. The numbers of the Eastern Borders route for such indicators as facilitators, illegal border crossings between BCPs, persons using fraudulent documents, applications for asylum, illegal stay are extremely insignificant at EU level. The only exception in the table is the indicator of refusals of entry that equals about 30% for quota on Eastern Partnership countries. Consequently, Eastern Partnership countries

represent a lower risk to the European Union in migration area than other parts of the world.

Table 2: Indicators of irregular migration

Indicator	EU Totals	EU MS (eastern land borders only)	% of EU Total	Only EaP Countries
Facilitators	2 542	5	0.2	17
Clandestine entries	970	15	1.5	:
Illegal border crossings between BCPs	20 422	112	0.5	:
Persons using fraudulent documents	4 755	719	1.5	187
Applications for asylum	103 621	2 705	2.6	234
Illegal stay	87 402	4 848	5.5	:
Effective returns	36 450	8 355	23.0	:
Returns decision issued	61 678	10 747	17.0	:
Refusals of entry	45 367	22 104	49.0	13 821

Source: *Frontex 2018.*

In the *Risk Analysis for 2019*, Frontex reviews the development of migration in 2019 and the next years under three pillars: the *likely* (prevention activities by transit countries determine arrivals in the European Union, border management will continue to be tested, systematic border checks will require further resources); the *possible* (sub-Saharan migrants could lead to new record in arrivals in the European Union, exodus from Syria's Idlib region could trigger a new uncontrollable migration wave, migratory pressure from Central and South America); the *unknown* (incomplete information, threats of terrorism-related movements) just to highlight the most important directions (Frontex 2019: 38–39).

Even the numbers at the Eastern Borders route are not so dramatic, however, they deserve to be carefully considered in connection to the identified risk areas within the pillars of the likely, the possible and the unknown, because the evolution could change in any direction due to new factors that influence migration.

Speaking about the future of migration, in 2018 a report on international migration drivers was published. It stated that the likely development of future migration trends is applicable to the Eastern Borders route as well. Among the implications for the evolution of migration, Fabrizio Natale suggests likely future migration drivers: economic drivers in countries of origin; economic drivers in countries of destination; demography; geographical distance, trade and globalisation; network effects; new

forms of international mobility; climate change; policies (Natale 2018). Shifts in migration paradigm can occur and are likely to modify these in the future.

5. Enhancement of Migration Management at European Union Eastern Borders

European Union migration policy has both *internal* and *external dimensions*. *External dimension* may refer to countries of origin, transit countries and reasons for migration. Migration management, alongside with other policy areas, belongs to a larger array of cooperation instruments between the European Union and its neighbours in Eastern Europe (including neighbours of the neighbours).

Migration management approach – characterized by intergovernmental cooperation (*focus*), a normal process in a globalizing world (*perception* of migration), being proactive (key *aim*) and a more holistic approach including development and human rights (key *notion*) – has been widely applied by the European Union in its wider eastern neighbourhood with the help of a couple of bilateral and multilateral instruments of cooperation. This "can be explained by the EU's disregard for local circumstances in its efforts to establish a unified management approach meant to deal with a wide spectrum of concerns about migration" (Sotkasiira 2016: 138).

In this respect, the European Union has developed specific policy initiatives of cooperation among which arrest our attention the European Neighbourhood Policy, the Eastern Partnership Policy and the Global Strategy for the European Union's Foreign and Security Policy, seemingly to address properly the issue under discussion.

European Neighbourhood Policy. The scope of the European Neighbourhood Policy (2004) resides in bringing closer the European Union and its neighbours by pursuing mutual interests and benefits. The *focus* is on supporting *stability*, *security* and *prosperity* in the neighbourhood. Geographically it includes eastern neighbours (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) and south neighbours (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia).

At the same time, the document contains *express provisions* on *migration* as well as: a neighbourhood policy for a European Union acting coherently and efficiently in the world (ENP, 6), economic and social development policy (ENP, 14), justice and home affairs (ENP, 17), regional cooperation on the EU eastern borders, *inter alia*, in the framework of the "Söderköping Process" (ENP, 21) and the Mediterranean

(ENP, 23). The European neighbourhood policy was revised once in 2015. Even if the initiative is in force, there are some voices speaking about the *obsolescence* of the European neighbourhood policy (Blockmans 2017).

Eastern Partnership. Regional engagement is based on the Eastern Partnership joint initiative (launched in 2009), as an extension of the European Neighbourhood Policy, which aims at *deepening* and *strengthening cooperation relations* between the European Union, its Member States and six Eastern and South-Eastern neighbours: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Cooperation between partners is set on four key *priority areas*: *economic development* and *market opportunities*; *strengthening institutions* and *good governance*; *connectivity*, *energy efficiency*, *environment* and *climate changes*; *mobility* and *people-to-people contacts*.

Eastern Partnership countries signed Partnership and Cooperation Agreements at an early stage; only with Belarus this initiative was suspended. Three Eastern Partnership countries – Georgia, Moldova and Ukraine – have Association Agreements in force. Armenia gave up on signing the Association Agreement with the European Union at the last minute.

Moreover, a follow-up *Eastern Partnership – 20 Deliverables for 2020* act establishes priority activities for the Eastern Partnership countries to accomplish *concrete tangible results* for citizens on existing commitments by horizontal deliverables, stronger economy, stronger governance, stronger connectivity, stronger society. These deliverables addressed to the Eastern Partnership countries comply with migration management approach and are seen as very practical measures of 'externalized' migration tools.

EU–Russia. Relations between the European Union and Russia have developed sinuously over time. In the 1990s, Russia was the first ex-Soviet member that signed the Partnership and Cooperation Agreement with the European Union. The agreement was prolonged, but later suspended due to deteriorating relations. This explains somehow fragile bilateral cooperation in migration management.

EUGS. *The Global Strategy for the European Union's Foreign and Security Policy* (EUGS), a very ambitious strategy on global issues, is likely to answer to the challenge of "the rings of fire" around the European Union and beyond, including the migration management approach. The EUGS refers to such values as peace, security, prosperity, democracy and a rules-based global order (part 1); principles as unity, engagement, responsibility and partnership (part 2); five priorities: 1) the security, 2) state and societal resilience to East and South (with a special sub-priority on a more effective

migration policy), 3) an integrated approach to conflicts and crises, 4) cooperative regional orders, 5) global governance (part 3); and the way from vision to action (part 4).

Moreover, the EUGS includes express provisions on migration that underline the importance of the migration management approach. In part 1, *values*, migration is appears in *democracy* section (EUGS 15). In part 2, *principles*, migration is referred to in *engagement* section (EUGS 17). In part 3, priorities, migration is granted more space in *priority 2* and *priority 4*. Priority 2, *state and societal resilience to East and South*, sub-priority *enlargement policy*, recognizes, among other things, that migration challenges are shared pleading for cooperation and wellbeing of citizens (EUGS 24-25). The sub-priority *resilience in surrounding regions* states that joined-up approach towards migration policy will be adopted by the European Union (EUGS 26). The special sub-priority on *a more effective migration policy* tackles the focus is on building resilience in origin and transit countries of migration in partnership with local, regional and international partners (EUGS 27–28). Priority 4, *cooperative regional orders*, sub-priority a *peaceful and prosperous Mediterranean, Middle East and Africa* underlines that for migration challenges it is important to prevent and solve conflicts, to promote development and respect of human rights in the region (EUGS 34–36). In the sub-priority a *closer Atlantic* and in the sub-priority a *connected Asia* it is stated that the European Union will deepen its cooperation on migration (EUGS 37, 38). In part 4, *from vision to action*, migration is treated in a *joined-up Europe* as an inherent unity of internal and external policies on humanitarian and development linkage to ensure coherence on migration efforts (EUGS 50).

To summarize, the EU's vision of migration management assumes *complex external measures* for *preventing* and *solving migration* problems. The vision foresees bilateral and multilateral cooperation tools. Moreover, the EU's partners post themselves as *transboundary aquifiers* of European values, principles and norms in migration area and beyond it. Around its borders, the *cross-border cooperation* is a key priority in enhancing both border and migration management.

Conclusions

The eastern borders of the European Union differentiate themselves among other borders in the North, South or West. These borders are *accessible* for *legal procedures*: traveling, shopping, asylum, etc.; and *permeable* for *illicit activities*: abuse of legal travel channels, illegal border crossings, smuggling of excise goods, etc.

The eastern borders of the European Union are mainly perceived as borders for *economic immigrants* coming from neighbouring and distant countries from the Eastern Partnership, the Community of Independent States and Asia.

People's mobility gives a *new shape* to migration through the eastern borders of the European Union, because it happens in *both directions*: non-EU nationals migrate in the European Union, and some citizens of the Baltic states move to Russia (usually it is the case with ethnic Russians).

The eastern border of the European Union witnesses *Europe's need for immigrants*, who comprise a valuable *social capital* in aging countries. In the same time, immigrants have *multiple* and *changeable identities* in a process ranging from *integration* to *transnationalism*. A *potential shift* in *migration paradigm* may occur due to the likely, the possible and the unknown development of immigrants' behaviour.

Migration management at EU eastern borders is supported by Partnership, Cooperation Agreements and Association Agreements and Eastern Borders Risk Analysis Network enhancing advanced and efficient instruments designed for irregular migration. A more comprehensive and sustainable *engagement* of all parties is necessary. The visa regime should become *humane*.

As the eastern political and geopolitical borders ("Schlechtegranzen", bad border, incorrect border, unnatural border) of the European Union differ from the cultural and civilizational borders ("Rechtegrenzen", good border, correct border, natural border); this may be conducive to *potential conflicts* with the will or without the will of the European Union.

Having all the above united, *migration management* at EU eastern borders approaches resolutely to the *development* of *border dialogue* in an enlarged (global) format and also the development of *migration governance*, paraphrasing Francois Crepeau's words in the way that *migration* is a *journey seeking dignity*.

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The Role of Romania in the Current European Union Refugee Crisis: is the Country Able to Integrate Asylum Seekers?

Abstract

This research examines the role Romania played in the current refugee/migration crisis, and the measures that it has taken in order to integrate the incoming refugees. Quantitative analysis was used in order to reveal the perceptions of the citizens towards the third country nationals at the beginning and after the refugee crisis. We argue that Romania represents a paradox, as it is mostly a country of emigrants with millions of Romanian citizens living, studying or working abroad in other EU/non-EU states. Thus, the question is, will Romania be able to handle the increased number of asylum claims from third country nationals and their subsequent accommodation and integration, if it cannot stop its own citizens from going abroad and making a living there?

Key words: integration, emigration, immigration, mandatory relocation, sociological integration theory, refugee crisis.

JEL Classification: F22, F50, J60, K37.

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Introduction

If we look at the historical and demographic landscape of Romania, we can state that it has never been a great colonial/expansionist country or a migration target of extra-European Communities. However, looking at its ethnic map, we notice that besides the Romanian majority there are various ethnic communities with different cultural, linguistic and religious traditions. Among the ethnic minorities we find: Hungarians, Roma, Ukrainians, Germans, Russians-Lipovans, Turks, Tatars, Serbian, Slovaks, Bulgarians, Croatians, Greeks, Jews, Czechs, Polish, Italians, Chinese, Armenians, Csangos, and Macedonians etc. So, in case of Romania we can speak about ethnic pluralism, but at the same time there are almost none extra-European. However, the current refugee crisis opened some new opportunities for the Romanian citizens to get acquainted with communities from outside of Europe, as under the mandatory relocation quota proposed by the EU, Romania has committed to take and integrate 6351 refugees from the Greek and Italian camps. Due to the fact that since the 90s not more than 40.000 people applied for asylum in Romania, the integration of third country nationals in that period did not make the top of the political agenda in the country. For years, Romania was known only as a transit and not as a destination country for people in need of international protection. However, the current statistics show a growing number of asylum seekers applying to stay at country level, a phenomenon that requires a coherent strategy, proper management and logistical capacity. The increasing number of asylum seekers found Romania somewhat unprepared to receive them, not to mention the arduous task of integrating them. On the other hand, Romania also faces a societal crisis, as 1 in every 5 adult Romanian citizens fit for work emigrated from the country. Romania is becoming the holder of a negative record within the EU: being the Member State with the highest number of emigrants within the European Community. Naturally, this will have serious repercussions in the future concerning the sustainability, employment and economic development of the country. Thus, Romania faces a double dilemma: first, its citizens emigrated to other countries in search of a better life due to the lack of adequate conditions back at home (thus the country experiences an acute lack of manpower, plus it is facing the challenges associated with the ageing of the population); secondly, under EU law it committed itself to take in and properly integrate third country nationals in need of international protection.

1. Methodology

The main aim of this research is to evaluate the role played by Romania in the current refugee stalemate, with the main purpose of assessing the possibility of successfully integrating asylum seekers within the Romanian society. In order to reach this objective, a predominantly quantitative analysis and the method of process tracing is applied.

In the first instance, the quantitative analysis of the data provided by European and national entities shall confer a genuine image of the Romanian migration picture, both with its immigration and emigration component. Thereby, detailed information shall be provided of the number of people who have emigrated and the third country nationals who came and those who lodged an asylum claim in the country. On the other hand, within the study secondary sources were also analysed, using qualitative methods as well. Knowing both the position of the political elite and of the Romanian citizens is also imperative for achieving the set target, as it has been identified the existence of a causal link between the level of efficiency of the reception/integration process, the stance of the decision-makers and the support of the average citizens. In order to reveal the attitude of the citizens, the method of process tracing was used, undertaking a sequential analysis of the evolution of the perception of citizens, corroborating the presumption according to which, the view of the people was partially influenced by the official stance of the political elite, by the framing of the media and mainly by their own mentality, culture, level of education, self-induced preconceptions and misguiding stereotypes. Finally, the examination of the existent logistical capabilities provided the last impetus needed for the final assessment: namely to appreciate the integrative ability of the Romanian society. Even though, Hartmut Esser's *sociological integration theory* provided the theoretical backbone, the study intends to be a less theoretical but a more practical, exploratory investigation.

2. Romania, a Country of Emigrants: the Romanian Exodus

As highlighted in the previous part, Romania's migration profile shows a negative trend, especially when it comes to emigration. Since its accession to the European

Union in 2007 and the opening of the Western European labour markets, millions of Romanians have decided to leave behind their country of origin, stating mainly political (the level of corruption and the quality of the political elite) and economic (the lack of possibilities, the existent conditions, low wages) reasons for their choice. The data provided by the Eurostat reveals that in 2007, 7.4% of the Romanian citizens of working age between 20 and 64 were living in another EU Member State. By 2012 this number almost doubled, increasing to 13.6%, while in 2017 Romania became the negative record setter, turning into the country with the highest number of emigrants within the European Union. It was estimated that around 19.7% of the adult population physically fit for work (1 in 5 people) left the country, migrating into another EU Member State. For Romania, in the 2007–2017 decade it signified an increase by 12.3%. In this trend, Romania was followed by Lithuania with 15%, Croatia with 14% and Portugal with 13.9%. On the other hand, in 2017 only 1% of the German, 1.1% of the British and 1.3 % of the Swedish and French citizens were living in another Member State (Eurostat 87/2018: 4).

According to the press release from the 29th of August 2018 issued by the Romanian National Institute of Statistics, the resident population of the country on the 1st of January 2018 was 19.524.000 inhabitants, registering a decrease by 120.7 thousand of people compared to the previous year 2017. On the 1st of January 2017 the resident population was 19.638.000, registering by 122.000 less people than in the previous year, 2016. The balance of international migration was negative, minus 76.209 people.

As the report reveals, on the one hand, the negative natural growth is to be held accountable for the phenomenon, as the mortality rate exceeded that of the birth rates, with the number of deaths being larger than the number of births by 71.125. On the other hand, the long-term temporary international migration balance was continuously negative with 53.381 citizens leaving the country since the previous reporting year. By this communication, the Romanian National Institute of Statistics does nothing but further confirm the perseverance of the declining pattern initiated in the country a few years ago, namely that Romania continues to be a country of emigration, the phenomenon of emigration being the second biggest cause of the country's population decline. Concerning the gender balance, more male citizens (50.9%) emigrated from the country in 2017 than females (Institutul Național de Statistică 2018: 1–2). Furthermore, just like in the vast majority of the other EU countries, in Romania also, the population is ageing, in 2018 reaching a ratio of 116.9 elderly to 100 young persons over 15, the gap between the elderly population aged 65 and over and the young population 0–14 years reaching 513.000 persons (3.551 thousand compared to 3.038 thousand persons), increasing compared to the 439.000 persons on 1 January 2017) (Ibidem).

The World Migration Report of the International Organization for Migration for 2018 also confirmed that in 2016 approximately 3 million Romanian citizens were residing in another EU or European Free Trade Association state, turning into the country with the highest number of emigrants within the EU. Besides providing accurate statistical data, the IOM goes even further by forecasting a rather gloomy future for Romania in terms of population movement, stating that if the current trend (emigration being higher than immigration) continues also in the following years, by 2050 Romania will experience severe population decline, which undoubtedly will negatively influence the country's long term economic development and productivity (World Migration Report 2018: 72–73).

Based on the data gathered by the Social Monitor commissioned by the Friedrich Ebert Stiftung association, on the 11th February 2018, 2.578.540 Romanian citizens were gone abroad for more than a year, 11.6% of the entire population residing in another country in 2017. Looking at the share of people leaving the country by region, we face the fact that out of the existent 8 development regions, the percentage of emigration is the highest in the North Eastern and South Eastern Region, by 17.7%, respectively 14.4% (Monitor Social 2018).

Accordingly, this foregoing quantitative analysis served multiple purposes:

- To familiarize the reader with Romania's emigration profile revealing the current state of affairs in terms of movement of people;
- To prepare the ground for the comparative cross examination concerning the immigration of third country nationals to Romania;
- To assist in reaching the overall objective of the study, namely to assess the possibility of integrating refugees in Romania.

3. The Other Side of the Coin: Immigration to Romania

The country's migration profile is not complete until we examine the movement of third country nationals to Romania, mainly emphasizing the asylum applications of non-EU citizens, as the article focuses on the possibility of integrating refugees into the Romanian society. However, at the same time we must not forget to briefly assess the number of third country nationals legally residing in Romania, as together with the analysis of the phenomenon of emigration and of asylum seeking, we shall get a holistic picture concerning the migratory landscape of the country.

Pursuant to the information published by the Romanian General Inspectorate for Immigration in February 2019, throughout 2018[1] there were 15.284 visa applications submitted by foreigners at the Romanian diplomatic missions abroad, 10.741 of which were approved while 1530 were rejected. There were 10.527 work permits issued[2], 69.8% for permanent workers and 26.8% for detached workers. In 2018, 120.358 foreign citizens were legally residing in the country, 69.141[3] of whom came from third countries[4] (with legal residence) and 51.217[5] originated from the EU/EEA/Switzerland[6] (Romanian General Inspectorate for Immigration Report 2017, 2018). As a consequence of mass emigration from the country, both in the white and the blue collar sectors there are serious shortages in skilled and also unskilled workers, especially in the fields of agriculture, service and construction. These sectors try to substitute the missing manpower with workers from outside the European Community, such as Vietnam and the Philippines etc.[7] (Libertatea 2018). This information is of a major importance, as it could serve as an incentive for third country nationals to immigrate to Romania, furthermore we do not exclude the possibility that in the near future these job shortages could be filled by the incoming refugees.

Concerning asylum applications, during 2018 the Inspectorate General for Immigration documented 2138 requests, a number which compared to the previous year is smaller (4820[8]), but overall, lately in the number of asylum applications an upward multiannual trend was registered in the country. Charts no. 1, 2, 3, 4, 5 and 6 were prepared using the data provided by Eurostat and the Romanian Inspectorate

[1] In 2017 there were 11.535 visa applications delivered with a favourable opinion, and 1435 with a negative opinion. Total number of 16.103 visa applications.

[2] In 2017 were issued only 4871 work permits.

[3] 35.4% were having family members in Romania, 22.8% cam for studies, and 17.8% had permanent stay.

[4] Mainly from the Republic of Moldova, Turkey, China, Syria, Israel etc.

[5] 40.2% were workers, 14.6% students, 27.4% had means of subsistence.

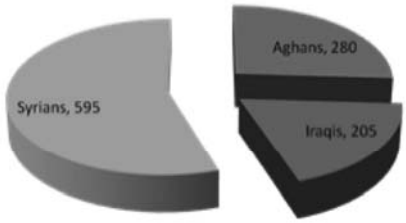
[6] Mainly from Italy, France, Germany, Greece, Hungary etc.

[7] By 2018, approximately 1500 people arrived from Vietnam.

[8] This 161% increase compared to 2016 is due to the rising number of asylum applications submitted by third country nationals who have entered the country irregularly at the border with Serbia. The vast majority of asylum claims (3198) were lodged at the Centre from Timisoara, this seriously exceeding the accommodating capacity of the facility. In order to prevent the overcrowding of the centre, the authorities had decided to transfer the asylum seekers to the other existent facilities, undertaking 104 transfer operations.

General for Immigration, reflecting the rising trend in asylum applications and for some forms of international protection submitted in Romania in the past 5 years.

Chart 1: First time asylum applications in Romania 2014. Top three applicants

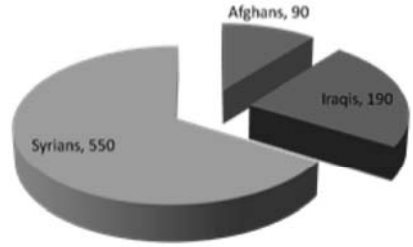


Total Romania: 1500; 0,3%of EU

Total EU28: 561 625

Source: Eurostat, 2014.

Chart 2: First time asylum applications in Romania 2015. Top three applicants

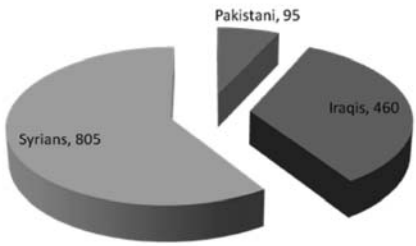


Total Romania: 1225; 0,1%of EU

Total EU28: 1 225 640

Source: Eurostat, 2015.

Chart 3: First time asylum applications in Romania 2016. Top three applicants

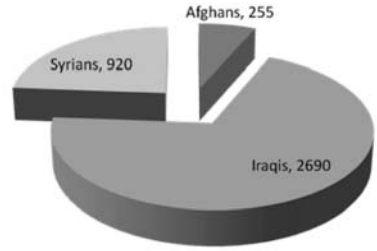


Total Romania: 1855; 0,2% of EU

Total EU28: 1 204 280

Source: Eurostat, 2016.

Chart 4: First time asylum applications in Romania 2017. Top three applicants



Total Romania: 4700; 0,7% of EU

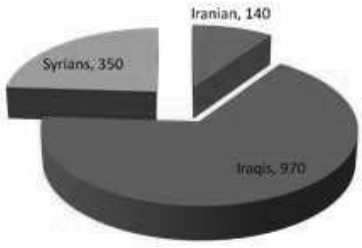
Total EU28: 1 225 640

Source: Eurostat, 2017.

Chart no. 7 validates the growing trend in terms of asylum applications submitted in the country by foreign citizens, which indeed compared to the EU average is low, but contrasted with the statistics from a decade ago clearly shows a continuously rising number at domestic level. Thus, we may conclude that the international migratory movements (triggered by the Arab Spring, the Libyan, Iraqi and the Syrian crisis etc.)

from the past decade influenced also Romania, increasing the detections of irregular entries and stays, and also the number of asylum applications.

Chart 5: First time asylum applications in Romania 2016. Top three applicants

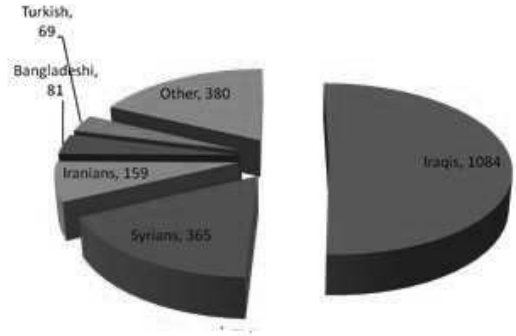


Total Romania: 1945; 0,3% of EU

Total EU28: 580 845

Source: Eurostat, 2018.

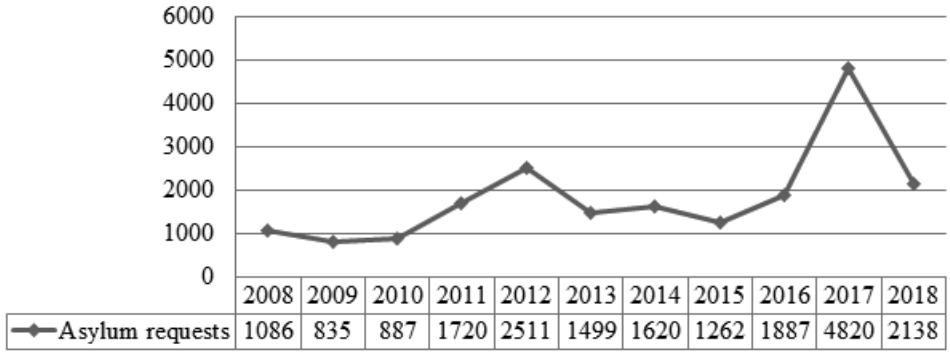
Chart 6: First time asylum applications in Romania 2017. Top applicants



Total Romania: 2138

Source: Inspectorate General for Immigration, 2018.

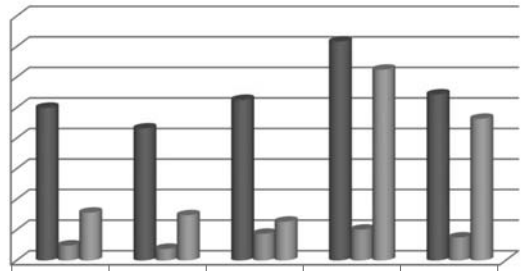
Chart 7: Asylum applications submitted in Romania 2008–2018



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Asylum requests	1086	835	887	1720	2511	1499	1620	1262	1887	4820	2138

Source: Own elaboration based on the data found at Inspectorate General for Immigration 2017, 2018.

Chart 8: Achievements in the field of migration Romania Inspectorate General for Immigration 2014–2018



	2014	2015	2016	2017	2018
Detections of illegal stay	2497	2159	2627	3580	2716
Effective returns	243	189	435	502	374
Dublin requests from other EU MS	780	738	633	3122	2317

Source: Own elaboration based on the data found at Inspectorate General for Immigration 2017, 2018.

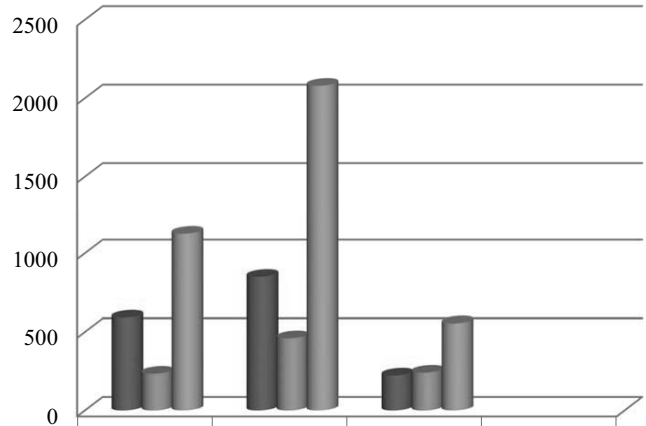
Concerning asylum grants, in 2017 (Inspectorate General for Immigration 2017, 2018):

- 2 079 applications for international protection have been settled;
- a form of protection was granted in 1.309 cases;
- 849 third country nationals got a refugee status;
- 460 were granted subsidiary protection;
- support for 101 immigrants repatriated under the Assisted Voluntary Repatriation. Program (main countries: Iraq, Philippines, Iran);
- under the intra-EU Relocation Scheme there were 174 TCNs resettled (172 from Greece and 2 from Italy);
- under the extra-EU relocation scheme there were 43 refugees from Turkey resettled;
- asylum approval rate was 63%.

While in 2018 the Inspectorate registered:

- 106 migrants who were assisted for voluntary repatriation;
- 223 received refugee status;
- 241 got subsidiary protection;
- 83.75% approval rate of asylum/international protection requests.

Chart 9: Asylum in Romania 2016–2018



	2016	2017	2018	
Refugee status	590	849	223	
Subsidiary protection	234	460	241	
Total solutioned cases	1124	2079	554	

Own elaboration based on the data found at Inspectorate General for Immigration 2017, 2018.

4. The Refugee Crisis and the Official Stance of the Romanian Political Elite

When the so called 'migratory crisis' debuted in 2015 and more than 1 million refugees/immigrants came to Europe from Africa and the Middle East, the Romanian authorities found themselves facing a major challenge: how to welcome and accommodate a large number of asylum seekers if Romania has never been a major destination country for immigrants and it is not adequately prepared from an administrative and logistical point of view (Costea 2016: 5).

Among the first steps taken by the central administration in this regard, we find the elaboration of a coherent National Immigration Strategy for the period 2015–2018 highlighting the need for a more flexible admission system and for an enhanced attention to third country nationals that might pose a threat to national security (Sebe 2016: 14). However, we consider that the motto of the strategy is meaningful and it already illustrates the official position of the central leadership, as according

to the strategy "migration is a process that needs to be managed, not a problem to be solved" (National Immigration Strategy for the period 2015–2018, 2015). The strategy also discloses the number of refugees (out of the 160.000 it was initially 1785) that Romania was supposed to take in initially. According to the two relocation schemes proposed by the European Commission through the implementation package of the European Migration Agenda, a total of 2.362 persons were foreseen for Romania, out of which 1.705 through the emergency relocation mechanism (682 from Greece and 1.023 from Italy) and 657 through the extra-EU resettlement program with Turkey. From the wording used within the document it is more than clear, that Romania was aligned with those EU Member States which were willing to show solidarity and to take in peoples in peril, and to "[...] participate in the joint efforts of the Member States to reduce the pressure of illegal migration" (Ibidem).

Nevertheless, even if within the National Strategy of Immigration the government officially accepted the quota imposed by the EU and committed itself to welcome and integrate the refugees, prior to the elaboration of the strategy within political circles there were heated debates concerning the level of solidarity that the country was supposed to show and the number of immigrants that it was about to take. The *responsibility frame* and the number of refugees under the mandatory relocation quota dominated the discussions on online media platforms and made the headlines of the vast majority of the written and online media in the country in this period (Corb, Buturoiu and Durach 2017: 8).

The former president of the country, Traian Băsescu, current leader of the Popular Movement Party and recently elected MEP to the European Parliament had one of the most outspoken attitudes against the mandatory quotas and welcoming refugees in general, pledging that if he had remained president, Romania would not have taken even one immigrant, as they pose security risks to the country. Furthermore, several times during interviews and discourses he expressed a clear aversion towards Muslim immigrants. Regarding the subject of refugees and the situation of Muslims in general, Traian Băsescu has positioned himself on the «market» of politics to attract extreme right-wing voters. In July 2015, in the context of public debate on the construction of a large mosque in Bucharest, the former president said that «such decisions are foolish, if not anti-national". According to him "We have a minority of 60–70.000 Muslims, we have mosques in Constanta, but to make the largest mosque in Europe and bring 6.000 Muslim students [...] There is no greater risk than bringing Muslim students to the country» (Răileanu et al. 2015: 50). In September 2015, he expressed Islamophobic views when he pointed out that the arrival of Muslim immigrants will lead to the Islamization of Europe: "I'm thinking about the problem

in terms of national security. Let's not forget that these people are Sunni, Shiite, who put bombs on each other in their country [...] Why do we have to Islamize Europe? We should destroy the boats and vessels right at the pier. Immigration will increase, otherwise, each year, it will triple from year to year"(Ibidem). For his statements, the former president was even sanctioned by the National Council for Fighting Discrimination.

As it was previously mentioned, at the beginning, the negotiations concerning the level of solidarity and the number of the received refugees were subject to heated debates. We must acknowledge that when the Commission proposed the mandatory relocation scheme for the first time, the position of Romania was not totally transparent and receptive, however, willy-nilly in the end the president accepted the initially proposed 1785 refugees. However, later on the Commission wanted to increase this number to 2475, provoking serious backlash against the EU's supranational institutions, a backlash that had culminated in Romania's negative vote within the Justice and Home Affairs Council, voting against the mandatory relocation scheme alongside Hungary, Slovakia and the Czech Republic (Iacob et al. 2016: 21). The former Prime Minister, Victor Ponta and former Minister for Home Affairs, Gabriel Oprea[9] were on the same wavelength with the president of the country, Klaus Iohannis, who, on the one hand, assured the EU decision-makers of Romania's solidarity (though this was conditional solidarity), but on the other hand, highlighted the country's incapacity to "integrate these refugees into society" (Sebe 2016: 10). As we can see, in case of Romania from the outset the debate was not about not wanting to accept asylum seekers, it was about the doubt whether it was able to, i.e. it was a matter of capability. Finally, because within the JHA Council there's no unanimous voting, the quota was accepted by the majority of the Member States and Romania was obliged to receive 2475 (this was later increased to 6351) persons in need of international protection, a request that later was honoured by the president, contrary to the initial aversion towards the mandatory relocation scheme. Furthermore, in 2016, the Romanian president saluted the deal with Turkey, also

[9] "In the context of Romania being a safe country, doing its duty with great professionalism, I will go to this JHA tomorrow. I have a very clear mandate from President Klaus Iohannis and Premier Victor Ponta, that I will express modestly and with dignity there, that Romania respects its initial commitments to receive 1.785 immigrants, and that is the ability at the moment to the Romanian state. Of course, we will vote against binding quotas, "Gabriel Oprea".

supporting the measures taken to help Turkey[10] in the context of the refugee crisis (Iacob et al. 2016: 21, 23). Already since 2015, immigrants were testing a new migratory route through the Black Sea raising the possibility of turning Romania into a major transit country, just like Greece, Hungary or Austria etc. (Frontex, Migratory Map 2015, 2016, 2017, 2018). When asked about the possibility of Romania turning into a major country of transit through the Black Sea, the president did not give much credit to this scenario, according to him: "As for a possible migratory route from Turkey on the Black Sea to Romania, I do not believe in such a route for two reasons. One the one hand, Turkey is very well in control of that area and once it is committed to detaining migrants we have no reason to question this matter. Two: The Black Sea cannot be approached on small boats, can only be crossed by fairly serious boats, or they will be immediately seen and therefore I do not think it will open such a route" (Iacob et al. 2016: 23). His forecast has come true, as since 2017[11] nobody came via this route, the Black Sea turning out to be more dangerous than the Mediterranean.

In conclusion to this section, we can state that since the debut of the crisis, the authorities are working hard to adjust both the legal and the logistical capacities of the country in order to properly receive and accommodate the asylum seekers, but their integration is another matter, it is a lengthy process, it takes time and patience from both parts. Thereby, in the upcoming parts we shall inspect the level of efficiency of the integration process into the Romanian society.

5. The perception of Romanian Citizens about Immigrants and Refugees

As underlined in the introduction, the main rational for the elaboration of this predominantly quantitative study is the assessment of the possibility of welcoming and successfully integrating asylum seekers and refugees into the Romanian society. Accordingly, it is indispensable to get acquainted with all the pieces of the puzzle, namely to 'gain connaissance' of both the perception of the political elite and of the civil society in this matter. How the decision-makers react to this phenomenon and what kind of a position they adopt from the start could make a difference between a

[10] In case of relocation from Turkey he accepted the quota, but continuously highlighted the importance of the voluntary nature of commitments for the relocation process.

[11] In 2017 there were 537 detections of illegal border crossing through the Black Sea route.

faulty and a propitious management of the situation. It is enough if we look at some politicians from Central and Southern Europe (Orbán Viktor, Robert Fico, Matteo Salvini, Mateusz Morawieczki etc.), who from the very beginning were reluctant to the idea of welcoming or taking in refugees and asylum seekers, and who were for adopting a zero tolerance and zero immigration policy, securitizing migration and building walls and barriers in order to keep TCNs out. By the repetition of an anti-immigrant rhetoric and the launch of a securitization call, nurturing the anxiety and the threat perception of the citizens, these leaders finally achieved their purpose: depicted asylum seekers as *personae non grata*, *criminals, terrorists, job thieves, welfare benefit seekers, Muslim invaders* etc. and kept them out of their countries. Ultimately, we must not forget that the legitimacy was given by the citizens, who believed in the securitizing discourse of the ruling class. Thus, in these countries the successful reception and integration of asylum seekers is rather difficult. Hence, there seems to be a correlation between the position taken by the political elite, the perception of the citizens and the success of the reception and integration process. Of course, regardless of the official stance of the authorities, the opinion of the people may differ. Such divergence of views could be the result of a lack of proper knowledge in respect to foreigners, their culture, religion, customs, way of life etc. Existing stereotypes, social prejudices, the mentality of the citizens could also act as barriers, preventing the citizens from building bridges which could connect them with these asylum seekers. A certain level of education, access to information, proper framing by the media and at the same time the willingness to find out more and veritable information are required in order to form a genuine image of these people in need of protection.

Quantitative analysis shall be carried out in order to gauge the opinion of the Romanian citizens about immigrants and refugees in general from the beginning[12] of the so called 'refugee crisis' until the present. Depending on the type of survey or questionnaire and the commissioned party there could be observed slight differences between the responses, but the overall message transmitted by them is that the vast majority of the Romanian citizens do not want refugees in the country, namely they do not want to coexist with asylum seekers/refugees.

At the beginning of the refugee crisis, one of the most read newspapers in the country, Gândul, launched an online poll, asking the citizens whether Romania should receive refugees or not. An overwhelming majority, 73.65% of the respondents (11.346 persons) expressed their negative view in respect of accepting refugees in

[12] Before 2015 is was not really a public debate issue.

the country, also clearly refusing the mandatory relocation quota imposed by the European Union (Gândul 2015).

Another poll initiated in the same year by one of the most important media trusts in the country, Digi24 got a similar result as the previous survey, 51% of the interviewed stating that they disagree with the possibility of refugees living in Romania (Romanian National Council for Refugees/British Council 2018: 6).

One of the most accurate surveys[13] was carried out by the Romanian Institute for Evaluation and Strategy in August 2015, on request of Digi24, using Computer Assisted Telephone Interviewing method on 1482 subjects over 18 years. According to the results, 83% of those interviewed have heard about the refugee crisis, 51% identifying war, while 46% poverty as the main reasons for the inflow of immigrants. 67% of those who have heard about this turmoil held accountable the governments of the countries of origin of these immigrants, and 54% blamed the DAESH terrorist organization for these migratory movements. Surprisingly, the respondents ranked Romania third in the line of the most affected countries by the migration crisis with 23%, just a little behind Germany (55%) and France (23%). On the other hand, 42% believed that there is a low risk for Romania to be exposed to an invasion of immigrants from the Middle East and Africa. When asked about the level of preparedness of the country in case of an influx the responses were overwhelmingly negative, 38% of the interviewees saying that they think that Romania is poorly prepared, while 35% underlined that it is even worse, as it is very inadequately prepared. In regards to the management of the 'crisis', the most trusted national organ was the army, followed[14] by the Gendarmerie, the Romanian Intelligence Service and the Romanian Border Police. Concerning the management of the migration stalemate in case of the European Union, the opinion was a bit more favourable, but overall just 39% of the respondents expressed a partial assent. Half of those surveyed, strongly agreed with the statement according to which the risk a terrorist threat from DAESH was increasing with the arrival of immigrants. 35% of the interviewees expressed total disaccord concerning the transformation of Romania into a transit country, while 26% totally agreed with this scenario. What is precious information for the future reception and integration of refugees and asylum seekers is that 32% totally, while 33% only partially agreed that Romania should receive a certain number of immigrants. It is however ambiguous, that while more than 60% would agree to

[13] Maximum tolerated errors +- 2.6%.

[14] In the rank of preferences.

receiving immigrants on the country level, 42% would not want to receive them in their residential areas (IRES 2015).

According to the National Institute for Statistics in 2015, 56.3% of the respondents were against receiving refugees in the country, this percentage increasing to 84.6% in 2016. Furthermore, several studies were launched also at the level of city halls, with the same final result as at national level[15]. Surveys were conducted by the representatives of the civil society/NGOs as well, in order to evaluate the public perception of the refugee stalemate. The poll conducted on 768 persons by an NGO, Pro-Democratia in 2016 had mainly the same outcome, 55% of those questioned said that Romania should not host refugees (Romanian National Council for Refugees/ British Council 2018: 6–7).

In 2018[16], the Romanian Institute for Evaluation and Strategy carried out a survey on 1300 adults, inquiring about the level of discrimination in Romania and the current perceptions of hate crimes. The results of the poll are of an utmost importance, as they reveal the viewpoint of the citizens, 3 years after the debut of the migration emergency. We could consider the result partially as a reflection of the success of government policies, and of the framing used by the media to label the phenomenon. When asked how much trust they have in foreigners/immigrants, 38% responded that they have little trust, while 31% answered that they don't trust them at all, 68% highlighting the lack of trust in respect of Muslims. On the other hand, 61% would accept an immigrant as their relative, 70% as a friend, 77% as their co-worker, 84% to live in the same city/town/village. In case of Muslims the situation is similar, with 61, 72, 81, 87 percentage. 36% of the respondents agreed with the following statement: "in general Muslims could be considered dangerous" [...], while 44% believed that immigrants must be stopped at the external borders of Europe (IRES 2018).

As we could see from these results, the Romanian society is rather polarized in respect of immigrants, but unfortunately the vast majority tend to refuse to welcome or to coexist with foreigners. This shows that more progress in needed in inclusion policies and a more focused approach from the competent authorities.

[15] See poll conducted at the level of the Bucharest City Hall in 2016: 66.1% of respondents said that they do not give their assent for refugees coming to the country and to live in their residential areas.

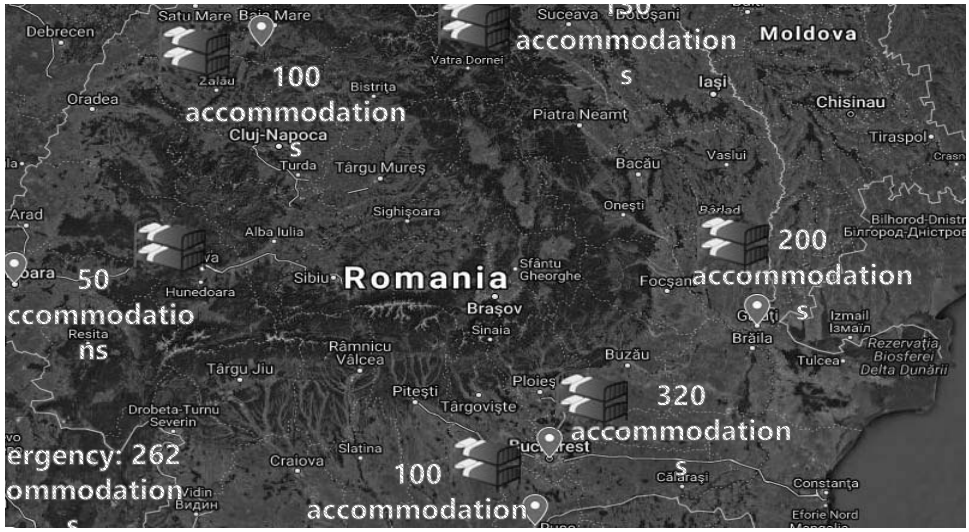
[16] Surveying period 26 November – 10 December 2018.

6. The Inclusion Capacity of the Romanian Regional Centres of Procedures and Accommodation for Asylum Seekers

In order to objectively evaluate the prospect of welcoming and integrating refugees, it is imperative to examine the logistical and administrative capacities of the Inspectorate General for Immigration being under the subordination of the Romanian Ministry of Home Affairs. From the official notification sent by the Inspectorate General to the Romanian Ombudsman in March 2018, it appears that currently in Romania there are 6 Regional centres of procedures and accommodation for asylum seekers at Timișoara (50), Șomcuta Mare (100 places), Rădăuți (130), Galați (200 places), Giurgiu (100) and București (320 places). As the number of asylum seekers is continuously growing and already exceeds the existing capacity (900 places) of the centres, the Inspectorate General started a project to augment the number of the existent beds by 100 in Timișoara, 100 in Rădăuți and 300 in Galați. Furthermore, the takeover and transformation of a property into a regional centre in Crevedia, Dâmbovița county has also started. The centre is due to be operational in two years with a capacity to accommodate 500 refugees (Letter of Inspectorate General to the Romanian Ombudsman 2018). Meanwhile, the Ministry of Development aims to launch a government program and strategy to rebuild some derelict buildings and to erect new homes for people with a certain form of protection. The money needed for this project will be secured from the Romanian state budget and from European funds[17]. Beside the spaces designated for the accommodation of third country nationals, the centres also have specially equipped rooms for health, recreational, sportive and educational purposes. Furthermore, in emergency situations the Inspectorate foresees the possibility to extend the number of the existent places: by 52 in București, by 10 in Galați, by 20 in Rădăuți, by 100 in Șomcuța Mare, by 10 in Timișoara and by 70 in Giurgiu, thus having the full accommodating capacity reach 1.162 places.

[17] EU Funds such as AMIF (Asylum, Migration and Integration Fund).

Figure 1. The map of Romania with the location of the 6 receptions centres for asylum seekers and refugees



Source: Own elaboration using Google maps.

Law no. 122/2006 on asylum in Romania and its subsequent modifications and completions determine the legal regime of aliens who request a form of protection in Romania, the legal regime of foreign beneficiaries of a form of protection in Romania, the procedure for granting, terminating and cancelling a form of protection in Romania, as well as the procedure for establishing the responsible Member State with the analysis of the asylum application (Law no. 122/2006).

According to this regulation, asylum seekers in Romania benefit of the following assistance (Law no. 122/2006):

- Free accommodation, on request in one of the 6 receptions centres of the Inspectorate General. During their housing, the Inspectorate is responsible for providing them all the necessary personal hygiene and cleaning products, and all the material goods needed for the preparation and serving of the daily meals;
- In case if they cannot provide for themselves, every asylum seeker is entitled to a daily allowance of 10 Ron for food, 100 Ron for clothing in the cold season and

67 Ron in the hot season, plus a maximum of 6 Ron/ person/day for other types of expenditures;
- Access to the labour market, according to the national legislation in vigour, 3 months after the date of lodging the asylum claim (if there hasn't been issued a negative opinion concerning the request);
- Free primary health/emergency hospital care, and free treatment in case of chronic and acute diseases;
- The underage asylum seekers prior to their mandatory enrolment in school, have to participate in Romanian language courses for a year;
- Can participate at various activities targeting cultural adaptation and on request can benefit from counselling and psychological assistance free of charge.

Complementary to the facilities provided by the Romanian government, asylum seekers and the persons who acquired a form of protection are also assisted through projects financed by the Asylum, Migration and Integration Fund. In this assistance plan the civil society and various NGOs play a crucial part, as through a well-established consultancy scheme, they are allowed to contribute to the establishment of objectives and initiatives for a better integration of third country nationals through projects financed by AMIF (Letter of Inspectorate General to the Romanian Ombudsman, 2018). As disclosed in the document C (2017)5626 of the decision of the European Commission to implement Romania's National Program of Support from the Fund for Migration, Asylum and Integration, the maximum contribution from AMIF in the 2014–2020 budgetary period is 53.343.047 Euros. Out of this sum 25.080.000 Euros are foreseen for the costs related to the transfer of applicants for international protection from Greece and Italy, according to 10th article of the Council Decision (EU) 2015/1523 and of Council Decision (EU) 2016/1601 (C2017/5626, 2017).

In conclusion to this part, we could assert that when it comes to welcoming and accommodating third country nationals benefitting from a certain form of protection, the Romanian Inspectorate General for Immigration encounters some logistical and administrative difficulties. The lack accommodation is one of the major hold-ups, hardening the housing of refugees; while on the other hand, the budgetary constraints also constitute serious setbacks. In reality, the financial assistance given to refugees is a mirror, reflecting the level of socio-economic development of the country. Indeed, the level of services offered to asylum seekers is precarious, but it is appropriate to the low wages and social benefits that the Romanian citizens also enjoy. We could label these, as major obstacles which stay in the way of a successful reception. Otherwise, we stress that this transient impasse can be overcome with

a more focused strategic approach from the competent national authorities. As we have seen, steps were already taken in this direction: such as the supplementation of the existent places, the takeover of properties and derelict buildings and their transformation into new reception centres etc. Furthermore, the asylum seekers can also benefit from other projects, funded by the EU (like AMIF), Frontex, EASO, the Norwegian Financial Mechanism, the Development Bank of the Council of Europe (Financial Assistance from the Fund for Migrants and Refugees) or by international and national NGOs etc. These act as compensatory measures for the low financial assistance provided by the Romanian government.

7. The prospect of Integrating Refugees and Asylum Seekers in Romania

The Cambridge English Dictionary defines the verb to integrate as the action "to mix with and join society or a group of people, often changing to suit their way of life, habits, and customs" (Cambridge English Dictionary 2019). While Merriam-Webster describes the noun integration as "the act or process or an instance of integrating: such as incorporation as equals into society or an organization of individuals of different groups (such as races); coordination of mental processes into a normal effective personality or with the environment" (Merriam-Webster Dictionary 2019).

As integration is a process that needs to be addressed also from a theoretical point of view, we have chosen Hartmut Esser's *sociological integration theory*, a paradigm successfully implemented (but also criticized) by various scholars examining the integration of immigrants into the German society. Esser proposed a conceptual clarification of the *concept of integration* on the basis of relevant sociological theories and concepts, defining integration as the cohesion of parts in a "systemic" whole, regardless of what this cohesion is based on. The units/pieces must be an indispensable part of what one might call an "integral" part of the whole. According to Esser, due to the existent cohesion between the parts, the system will delimit itself from a specific "environment" and will become identifiable as a self-standing system within this milieu. In order to illustrate even more the particularities of integration, Esser presents its opposite process, the *segmentation*, in which the pieces are juxtaposed, being unable to form an identifiable self-standing system within the existent environment. Accordingly, integration implies the presence of a certain degree of interdependence between the units of the system. Thus, interdependence is being used as a specific

feature of demarcation from the respective environment. Depending on the level of interdependence, the system can be more or less integrated, and because of this interconnectedness the behaviour of one unit could affect the system as a whole and the other pieces of the puzzle. This statement is also valid in case of social systems/societies. In this regard, Esser gives the example of a neighbourhood, arguing that neighbourhoods form integrated social systems if the families living in it know each other, and interact with each other i.e. there are various types of interactions amongst them (social, cultural, economic, linguistic, educational etc.). On the contrary, neighbourhoods become non-integrated or segmented if the communities/families only share the common space of the neighbourhood but nothing else, the amount of interactions amongst them being limited or almost non-existent. Namely they only co-exist, but do not collaborate or interact with each other (Esser 2001: 1–3). According to Esser's main tenet, there are 4 preconditions of a successful systemic and social integration: *culturation*[18] (cultural integration), *positioning*, *interaction* and *identification*. *Culturation* means the acquisition of the culture and the learning of the state language, while *positioning* signifies the earning of a certain position[19] within society; *interaction* means the establishment of contacts of all kinds with the host society, while *identification* presumes the development of an emotional bond with the receiving society (Ibidem: 8–12).

Moreover, Esser's theory is insightful, acknowledging the fact that a successful integration is always the result of reciprocal efforts taken by both the host society and the newcomer migrant populations. On the other hand, even though he upholds the importance of mutual efforts, he stresses that the primary responsibility to dissolve ethnic differences belongs to the immigrants and not to the host society, thus generating debates within the scholarly world concerning the problem of assimilation. He describes assimilation as the vanishing of systematic differences and not as a one-sided adaption to the host society, distinguishing 5 dimensions of it: the linguistic, the cultural, the economic, the spatial, the social and the emotional dimension of assimilation (Ibidem: 17–18). Nevertheless, Esser fails to take into account the negative connotations that the concept of assimilation might entail, as it could lead to the loss of the personal or cultural identity and of the 'self'.

After this theoretical briefing we shall see whether the 4 preconditions of successful integration could be implemented in the Romanian milieu.

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[18] From the German word Kulturation.

[19] By acquiring a job, education and status in the society.

According to the official national statistics, in 2016 and 2017 Romania relocated 728 refugees from Greece and Italy (554 in 2016 and 174 in 2017) plus an additional 43 persons under the extra-EU relocation scheme from Turkey in 2017 (Letter of Inspectorate General to the Romanian Ombudsman, 2018). In Decision No. 40 for the completion of the Government Decision No. 1.596/2008 on the resettlement of refugees in Romania published in the Official Gazette no 133 on the 12th of February 2018, Romania committed to accept a number of 109 refugees in need of resettlement, and 80 persons from Turkey in the period 2018–2019 (Inspectorate General for Immigration 2018).

As shown in the data submitted by the Inspectorate General in January 2018, on September 30, 2017, IGI's records included 1103 persons with a form of protection who opted for joining the integration program carried out between 30.09.2016 – 30.09.2017. Ranking countries of origin are: Syria, Iraq, Afghanistan, Eritrea, Palestinian stateless persons, Somalia, Yemen, Iran Pakistan, Egypt, Central African Republic, Angola, Burundi, Rwanda, Ethiopia, Lebanon, Libya, Armenia, Bosnia, Georgia, Ukraine and the Congo (Witec and Berbec 2018: 4–15).

Within the integration program are offered three types of activities:

1. Romanian language learning courses[20];
2. Cultural accommodation sessions;
3. Sessions/counselling activities.

The Romanian language courses are organized by the General Inspectorate for Immigration through the collaboration with the Ministry of National Education through the school inspectorates and by the non-governmental organizations working in the field of asylum and integration of foreigners in Romania and carrying out annually certain projects funded by the Fund for Asylum, Migration and Integration. The cultural orientation courses and the counselling sessions are supported by the integration officers and the specialized staff of the Regional Centres of the General Inspectorate for Immigration and by the NGOs[21] working in the field of asylum

[20] The following categories of foreigners are granted access to Romanian language courses: asylum seekers, persons who have obtained a form of protection; foreign citizens with the right of residence on the territory of Romania.

[21] In Romania there are 14 Regional Integration Centres in the following cities: Timisoara, Oradea, Cluj-Napoca, Baia Mare, Sibiu, Tirgu Mures, Bucharest, Craiova, Brasov, Pitesti, Iasi, Constanta, Galati and Vaslui. The main non-governmental organizations that currently operate in the integration of refugees are: the Ecumenical Association of Churches in Romania – AIDRom, the National Romanian Council for Refugees CNRR, the International Organization for Migration – Mission in Romania – IOM, the ICAR Foundation, the Jesuit Refugee Service – JRS and a few other local organisations.

and foreigners integration in Romania and carrying out funded projects previously mentioned (Ibidem).

The refugees participating in the integration programme will be granted: (Ibidem)

- Accommodation, upon request, in the centres of the General Inspectorate for Immigration, for the period of up to 12 months. To benefit from this service the refugees have to pay a monthly contribution toward the cost of utilities. Vulnerable people are exempted from this requirement, according to GO 44/2004;
- Romanian language courses;
- Cultural accommodation sessions;
- Material aid, for a period of two months;
- Social counselling which includes ensuring access to the rights they have in Romania: the right to employment, the right to housing, the right to health and social care, and the right to education;
- Counselling and psychological support;
- Material aid amounting to 540 Ron (120 EUR)/person for a period not exceeding 12 months, provided under the condition of an active participation in the integration programme;
- After completing the programme, refugees can apply for financial support to pay for accommodation outside the centre, settling up 50% of the accommodation costs for a period of one year.

In 2018, 508 people who have obtained a form of protection have applied to join the integration program, 1146 foreigners with a form of protection have benefited from integration programs (Inspectorate General for Immigration 2018).

In the following section[22], we shall succinctly present the results of the Index of Integration of Immigrants in Romania report for the year 2017, as besides third country nationals it also reveals important data about the integration of Beneficiaries of International Protection. Of course, the results should not be considered exhaustive as they do not reveal information about all the categories of migrants with a special status from the country. Otherwise, it is rather difficult to keep track the trajectory of all the migrants[23] with a special status, once they have finished their integration programme.

[22] This part represents entirely the results of report entitled Index of Integration of Immigrants in Romania 2017.

[23] They are a few visible cases as they were more mediatized: Mahmoud pastry cook at Giurgiu, 5 Syrians at a fast food restaurant in Cluj-Napoca, other 3 refugees from Syria hired by a factory in Cluj-Napoca etc.

General context Migrant integration (Index of Integration of Immigrants in Romania 2017: 20–21).

- In 2017 there were 66.850 immigrants (3924 BIP[24]s and 62.926 TCN[25]s), accounting for 0.34% of the Romanian population, an increase of 2.9% compared to 2016 (2903 BIP and 61 994 TCN);
- The number of beneficiaries of international protection increased by 35.2% in 2017 compared to 2016 and the number of third-country nationals increased by 0.15%;
- Most BIP immigrants originate from countries like Syria (58.18%), Iraq (20.57%), or Afghanistan (3.85%);
- Most third country nationals come from neighbouring countries, such as Moldova (16.24%), Ukraine (1.77%), Serbia (1.90%), or Turkey (14.24%);
- 89.07% of all immigrants (BIP and TCNs) are in the active population category (aged 15–64) compared to 61.17% of the total native population;
- Women account for only 39.75% of the total number of BIP and TCNs;
- 65.68% of the immigrants (BIP and TCNs) came to Romania in order to study and 8.63% to work as it is revealed;
- Romania is a relatively new destination country for immigrants. 48.29% of immigrants (BIP and TCN) have been living in Romania for less than one year, 25.98% for one to four years, and 25.72% for more than four years;
- 90.27% of immigrants (BIP and TCN) are established in urban areas, compared to 53.72% of the indigenous population;
- More than 60% of all immigrants (BIP and TCN) are residing in the biggest counties: Bucharest (33.8%), Ilfov (10.5%), Timiş (6.4%), Constanța (5.9%) and Cluj (4.2%);
- The average monthly income of an immigrant is 2.059 Ron, lower than the net average income in Romania (2.376 Ron);
- The native population has a higher social index than immigrants (Beneficiaries of International Protection, BIPs and Third Country Nationals, TCNs);
- More than 20% of immigrants (BIP and TCNs) declared that they are discriminated because of their immigrant status, because they have another race or ethnicity, or because of their knowledge of the Romanian language;

[24] Beneficiaries of International Protection.

[25] Third Country Nationals.

- 44.8% complain about discrimination in relation to public transport companies, followed by the General Inspectorate for Immigration (42.9%) and educational units (40.6%).

Education context (Index of Integration of Immigrants in Romania 2017: 22)

- Approximately 80% of immigrants (BIP and TCN) declare that they are or have been involved in study programs taking place in Romania;
- Approximately 64.1% of immigrants (BIP and TCN) are following or undergoing a study program in the public education system and 13.3% are following or undergoing a private study program;
- Approximately 45% of immigrants (BIP and TCN) declared that they were part of university education programs in the country of origin before coming to Romania;
- Immigrants (BIP and TCN) are involved in education programs in Romania with 34% of them in the English language, followed by Romanian for 28% and by French for 3%;
- 316 BIP and TCN students were enrolled in the 2015–2016 school year. Of these, 10.76% were registered in the pre-school cycle, 31.02% in the primary cycle, 16.77% in the middle school and 38.93% in the high school cycle. Only 2.58% of pupils belonging to the BIP and TCN categories were registered in vocational education;
- In 2015–2016 school year, based on the data forwarded by the 27 county inspectorates, 19 students were enrolled in the capacity examination and 16 in the baccalaureate exam. 78.9% of them got passing grade over 5 at the capacity examination and 62.5% passed the baccalaureate exam.

Languages and culture dimension (Index of Integration of Immigrants in Romania 2017: 23)

- BIPs and TCNs speak English, Romanian, French and Arabic. Romanian was most often mentioned as a foreign language spoken by immigrants (BIPs and TCNs);
- Approximately 8% of immigrants (BPtheI and RTT) have 2 or more mother tongues;
- Within family mainly the mother tongue is used, while Romanian is the most used in dialogue with friends and at work;
- Approximately 25% of immigrants (BPI and RTT) consider that they have a relatively high level of knowledge about Romania's history and culture;
- More than 42% of immigrants (BPI and RTT) state that they attended courses offered free of charge by education institutions in Romania and 7.6% in courses offered free of charge by non-governmental organizations.

Employment (Index of Integration of Immigrants in Romania 2017: 25)

- About 70% of County Agencies for Employment have been reporting data on unemployed BPIs and TCNs;
- Approximately 13% of Territorial Labour Offices at county level reported data on the requested information, 87% of them mentioning that they do not have such data or that they do not have a special methodology to record in their systems the persons residing legally in Romania as BIPs and TCNs;
- County Agencies for Employment and Territorial Labour Offices do not collect and centralize data on the number of employees or the unemployed and their type for the immigrant category (BIPs and TCNs);
- what we can know from other sources is that most immigrants (BIPs and TCNs) have fixed-term contracts, only 39.2% benefit from indefinite work contracts;
- Immigrants (BIPs and TCNs) working in Romania tend to have a work program similar to the native population, working an average of 7.78 hours per day, with a value of 7.33 hours for those with contract for the specified period and 8.4 hours for those with indefinite contracts;
- 63.5% of immigrants (BIP and TCNs) work in the private sector, 10.6% in the non-governmental sector, and 25.9% in the public sector.

Conclusions

At the beginning, we have specified that the main objective of this study is to analyse the role played by Romania in the current refugee crisis, with the purpose of assessing the possibility of successfully integrating asylum seekers into the Romanian society. Accordingly, we have explored the balance between the *pros* and the *cons* in this regard, observing where the balance will swing.

As *pro* arguments for an efficient integration, we have found an overall positive mindset at the level of the decision-makers (government and presidential bureau), who more or less are on the same wavelength in respect of receiving and integrating people in need of international protection. The following quotations genuinely reflect the current position of the political class, as in their opinion "is a shame to waste a good crisis"/ "we do not deal with a crisis, but with an opportunity to create a functional system for the integration of refugees, both on short term and for the

future" (Sebe 2016: 15). In our opinion, it is also praiseworthy the fact that contrary to the initial reluctance and the assumed gaps in the accommodating capacity, the country has lived up to its obligations and honoured the requirements under the mandatory relocation scheme. Even if there does not exist a full consensus between the Government and the Presidential Administration, there is willingness to try to manage the situation, "Romania wants to be part of the solution and not of the problem" (Ibidem: 17). We have seen that since the beginning of the migration surge proficient measures were taken for the augmentation of the existent places in the reception centres, furthermore the involvement of the civil society and NGOs in the integration process can be perceived as true added values. Unfortunately, on the other hand, the *cons* also abound as except from the logistical obstacles, we must acknowledge that the level of services offered to asylum seekers is precarious, similar to the low level of salaries and social benefits that Romanian citizens also enjoy. This reflects the level of socio-economic development of the country, and this is not something that changes from one night to the other. Furthermore, traditionally Romania has the profile of a transit and not of a destination country, and we must not forget that it is not in Schengen. Romania has a negative profile in terms of population movement, as more people emigrate than immigrate and the birth rates are declining as well. The presence of asylum seekers could be properly fructified, as on the long run they could fill in the gaps on the labour market, however, for this to happen, successful integration is needed, which is being made more difficult by other obstacles as well, such as the mentality, education, level of prejudice of the native population, the great majority of which refuse to coexist with immigrants. Additionally, it is rather difficult to assess the integration in Romania by using Esser's four preconditions *culturation*, *positioning*, *interaction* and *identification*. Looking at the Index of Integration of Immigrants in the Romanian report, we can conclude that the integration of beneficiaries of international protection into the Romanian society is only a partial success and much more is needed in the future if the country is to be transformed into a genuine receiving and integrating environment.

As for the final say, we fully believe that for our country, admitting a greater number of refugees would be a long-term chance to compensate for the deficits that have arisen over the past decade through massive labour migration to Western Europe. At the same time however, Romania must create proper incentives to bring home those who have emigrated in search of a better life.

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Pursuing Public Insecurity? The New Italian Decree on "Immigration and Security"

Abstract

In December 2018, the Italian Parliament definitely confirmed the so-called "Immigration and Security" Decree, which deeply reformed the regulation of Migration and Integration. The present work aims at summarizing the innovations introduced by the new Decree and confront them with the critical remarks and concerns of legal scholars and asylum experts, stressing its conceivable risks of unconstitutionality. Final goal of the article is to challenge what the real aim of the new Decree is: if it ends up increasing precarious and instable living conditions for migrants on Italian soil and therefore threatening social security, rather than improving public safety and protection for citizens and legal residents.

Key words: migration, security, integration, Italy, EU.
JEL Classification: K37, F22, O15.

Introduction

The Italian Government issued a new Law Decree on Migration at the beginning of October (Decreto Legge n. 113 of 4.10.2018). On December 3, 2018 the Italian Chamber of Deputies approved the Law n. 132/2018, the so-called "Immigration and Security" Decree, in the version amended and approved by the Senate of the Republic

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on the previous November 7 with 396 votes to 99 (Vedaschi 2008: 211–236). According to Art. 77 I of the Constitution, the Government may not enact any provisions having force of law: it is only given the opportunity to adopt measures with legal force in cases of "extraordinary necessity and urgency" adopting a so-called "*Decreto Legge*" (Legislative Decree). The decree has the same force of law as the laws enacted by the two Chambers of the Italian Parliament. By the way, in order to grant parliamentary control over the decree, the decree shall be sent to the Chambers on the same day it is enacted. They must "convert" the decree into an ordinary law, i.e. confirm it within 60 days. If the Parliament rejects the conversion or allows the deadline to expire, the decree is deemed to have been rejected. A rejected decree loses its validity retroactively (*ex tunc*) and is therefore treated as if it had never existed. Since the Government had asked for a vote of confidence on the conversion law, none of the more than six hundred amendments presented by the opposition were discussed, while the few amendments presented by the 5-Stars Movement were withdrawn. MPs of the Lega, 5-Stars Movement, Forza Italia and Fratelli d'Italia voted for the new law, while MPs of the Democratic Party, Liberi e Uguali and some 5-Stars representatives voted against it. After the General Elections of March 4, 2018, a new Government had been formed on June 1, 2018 under the leadership of independent Private Law Professor Giuseppe Conte, supported by the populist party Five-Stars Movement and the extreme right nationalist party *Lega*. The opposition consists of the centre-left party *Partito Democratico*, the conservative party *Forza Italia*, the new-fascist party *Fratelli D'Italia*, the left oriented party *Liberi e Uguali*, and several smaller movements holding the few seats left in both chambers of the Italian Parliament.

The decree intervenes on a wide range of matters (urban security, fight against mafia and terrorism), but above all it deeply changes the regulation of asylum, immigration and citizenship. The new provision is very controversial and raised criticism from several MPs belonging to the 5-Stars Movement, which is part of the current political majority supporting the right-oriented Government. In a letter addressed to the Prime Minister Giuseppe Conte the Head of State Sergio Mattarella stressed his strong expectation that the Decree respected the basic principles of the Constitution, as well as the international Conventions and the binding European Directives and Regulations on the matter: furthermore, this is what is expressly requested by Art. 117 I of the Constitution, which states: "Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations". On the one hand, according to the Minister of the Interior Matteo Salvini, the Decree will improve the citizens' security and make immigration management more effective.

On the other hand, several experts accuse the new law of being unconstitutional, and claim it will cause counterproductive effects, increasing the number of foreign citizens who find themselves in situations of irregularities and reducing the effective public security.

The present work aims at summarizing the innovations introduced by the new Decree and confronting them with the critical remarks and concerns of asylum experts, stressing its conceivable risks of unconstitutionality (Algostino 2018: 165–199), in order to demonstrate that the Decree does not respect the constitutional provisions on many occasions, and that for this reason it could be declared unconstitutional by the Italian Constitutional Court.

However, a possible general cause of unconstitutionality could already regard the fact that, according to the Constitution, Law Decrees are admitted only in explicit conditions of extraordinary necessity and urgency, when a very rapid and specific regulation is requested. In fact, according to Art. 77 of the Constitution, "the Government may not, without an enabling act from the Houses, issue a decree having force of law. When the Government, in case of necessity and urgency, adopts under its own responsibility a temporary measure, it shall introduce such measure to Parliament for transposition into law. During dissolution, Parliament shall be convened within five days of such introduction". The Italian Constitutional Court stated that the requirements of necessity and urgency cannot simply be affirmed by the Government but must be verified by the objective conditions of the Decree issue (Corte Costituzionale 171/2007). In the meantime, however, migration is no longer an exceptional, but rather a structural phenomenon all over the Mediterranean Sea: even the Italian Ministry of the Interior informed on its site that the number of migrant landings in Italy in 2018 has decreased by 80 percent, compared to previous years. According to the *Dipartimento Libertà Civili e Immigrazione* (Department of Civil Liberties and Immigration) of the Ministry of Interiors, 23,011 migrants landed on Italian coasts from 1 January to 30 November 2018, 12,976 of them coming from Libya: 80.34 percent less than in 2017 and 86.70 percent less than in 2016 (Ministero degli Interni 2018). The most recent information show that between 1 January and 4 April 2019, only 532 migrants achieved the Italian coasts (Ministero degli Interni 2019a). Finally, according to Art. 15 III Law nr. 400 of 23.8.1988, which states: "The decrees must contain measures for immediate application and their content must be specific, homogeneous and consistent with their title", law Decrees should concern specific and homogeneous topics, while the so-called *Decreto Sicurezza* refers to heterogeneous matters unrelated to each other.

Another possible reason of unconstitutionality concerns the fact that the Decree is not just limited to regulating the forms of access to international protection for migrants and asylum seekers, but also contains a wide range of articles covering different matters (public security, prevention of and fight against terrorism and mafia crime, provisions on the organisation and functioning of the national Agency for administration and destination of the goods seized and confiscated from organised crime) (Ruotolo 2018: 173–176). The heterogeneity of the decree could indeed represent a sufficient reason to declare it unconstitutional, since the Italian Constitutional Court has expressly stated the unconstitutionality of a decree whose contents are too heterogeneous with respect to the objectives that it intends to achieve (Corte Costituzionale 2012).

1. Abolition of Humanitarian Protection

Before the Law Decree came into force, the Italian system admitted three levels of international protection:

a) Refugee status. The legal basis for this right is the 1951 Geneva Refugee Convention, whose Art. 1 II 1951 grants the refugee status to asylum seekers "for reasons of race, religion, citizenship, belonging to a particular social group or for political opinions". Besides, EU Directives 29 April 2004 n. 2004/83/EC and 13 December 2011 n. 2011/95/EU extended the Refugee status to those migrants able to prove being victims of persecution due to their gender or sexual orientation.
b) Subsidiary protection. This kind of protection relies on European legislation and is acknowledged by all European Union Member States (Balioz, Ruiz 2016: 240–270). According to Art. 14 of the Legislative Decree n. 251/2007, implementing Art. 15 of the European Directive n. 2011/95/UE, it is assigned to those persons who, despite being unable to be considered as refugees, would face an "effective risk of suffering serious harm" if they were returned to their country of origin. Serious harm includes "death or execution", "torture or other forms of punishment or human or degrading treatment" and "the serious and individual threat to life or the person of a civilian resulting from indiscriminate violence in situations of armed conflict" (Albano 2018).
c) Humanitarian protection. This is a third level of protection, which should actually be called "residence permit for humanitarian reasons" (Benvenuti 2019): it was introduced in Italy in 1998 and has been granted by the Consolidated Immigration

Act (*Testo Unico sull'Immigrazione*) until October 2018 (Zorzella 2018). Many other European countries have alternative forms of protection in addition to refugee status and subsidiary protection. In Italy, humanitarian protection was a residual category, granted for different and rather discretionary reasons, which could vary from health problems to conditions of severe poverty in the country (or region) of origin of an asylum seeker. The maximum duration of the residence permit for humanitarian reasons was two years.

In its first article, the Decree abolishes the protection for humanitarian reasons, so far granted to foreign citizens who proved "serious reasons, in particular of a humanitarian nature or resulting from constitutional or international obligations of the Italian State", or to people fleeing emergencies such as conflicts, natural disasters or other serious events in countries outside the European Union. Art. 19 of the Consolidated Immigration Act extends humanitarian protection also to foreign citizens who cannot be expelled, because they would likely face persecution in their country, or if they were victims of exploitation or trafficking (Acierno 2018: 99–107). In these cases, the permit had a duration ranging from six months to two years and was renewable.

In recent years, humanitarian protection has been the main form of legal protection granted to foreign citizens reaching Italy. In 2017, 130,000 applications for international protection have been submitted: 52 percent of the cases were rejected, 25 percent were granted humanitarian protection, 8 percent were granted refugee status, another 8 percent obtained subsidiary protection, and the remaining 7 percent obtained other types of protection (Ministero degli Interni 2019b). In 2018, 67 percent of 53,600 submitted applications for asylum were rejected. From the remaining 33 percent, 21 gained humanitarian protection, 7 percent got asylum and 5 per cent subsidiary protection (Ministero degli Interni 2019c). According to the Researcher Matteo Villa of the *Istituto per gli Studi di Politica Internazionale* – ISPI (Institute for International Policy Studies), from June to December 2018 applications should have decreased by 20 percent compared to the same period of 2017 (Villa 2018), but it in the end over 76,400 application for asylum were submitted in 2018 – what demonstrates that Italy is no longer facing a "migrants' emergency" (Camilli 2018a).

With the new Decree, the residence permit for humanitarian reasons can no longer be granted, not even by a court appealed for a rejected asylum application. Since the Decree is not retroactive, it does not apply to those who submitted the asylum application before October 5, 2018 – the day the Decree came into force. The question has been recently explained by decision no. 4890/2019 of the Court of Cassation: the Italian Supreme Court was asked to clear the terms of temporal enforcement

of the provision contained in the Decree which repealed the residence permit for humanitarian reasons. It was necessary to understand whether this abrogation had immediate effects with the entry into force of the Decree also for pending procedures, or whether it concerned only applications for international protection submitted after the entry into force of the Decree on 5 October 2018. The answer given by the Supreme Court – which also conforms to all the jurisprudence issued by those Courts of Appeal that had ruled on the matter in the previous months – was clear: the repeal of the permit for humanitarian reasons is relevant only for those who have applied after October 5, 2018. Therefore, when the territorial commissions (the agencies responsible for examining applications for asylum) check an asylum application submitted before October 5, 2018, they must be able to recognise humanitarian protection. Should a territorial commission have given the new Decree retroactive effects, it would have to overrule its previous decisions to deny humanitarian protection to migrants who applied earlier than October 5, 2018. Furthermore, recent contributions suggest to challenge the constitutionality of the denial of humanitarian protection also for applications for asylum submitted after the deadline of October 5, 2018. Should the Constitutional Court declare the rule unconstitutional, the possibility of granting humanitarian protection would be restored for all migrants applying for asylum in Italy (Padula 2018; Serra 2019).

As long as the provision of the Decree remains in force, instead of humanitarian protection, a residence permit will be provided for some "special cases": victims of domestic violence or serious work exploitation, people in urgent need of medical treatment because of critical health conditions, people coming from a country in a situation of "contingent and exceptional calamity". Finally, a residence permit is conceded to foreign citizen who have distinguished themselves through "acts of particular civil value": this can be granted if the concerned person carried out acts of special moral courage, i.e. he or she has put his life in real danger: 1) to save people in immediate and grave danger; 2) to prevent or reduce the damage caused by a serious public or private disaster, 3) to restore public order, 4) to contribute to arrest criminals, 5) to promote scientific knowledge or 6) generally speaking, to take care of the wealth of human beings or uphold the name and reputation of the nation. This kind of permit is conceded on proposal of the Prefect, with the approval of the Ministry of the Interior, lasts two years and cannot be renewed, but can only be transformed into a working permit, if the necessary conditions apply.

Before the issue of the new Decree, the Italian system offered two types of humanitarian protection. First, there was an "external" humanitarian protection "outside" the asylum procedure, based on Art. 5 par. 6 of the Consolidated

Immigration Act. Second, there was an "internal" protection on humanitarian grounds within the asylum procedure, which was foreseen in art. 32 par. 3 of the Legislative Decree no. 25 of 2008 (Morozzo della Rocca 2018: 108–116).

The first one – the humanitarian protection external to the asylum procedure – applied when "serious" reasons of a humanitarian nature, constitutional or international obligations of the Italian State arose. In such cases, the residence permit could not be refused or revoked. A "residence permit on humanitarian grounds" was thus issued by the *Questore* (Police Commissioner), who is the leading public official in charge of every *Questura*. According to case law, in these cases the applicant holds a subjective right, established and recognised by the administrative authority issuing the residence permit. Therefore, the competent authority had to obtain the necessary documents from the applicant, proving his/her objective and serious personal situation and excluding his/her deportation from Italian territory.

The second one – the "internal" humanitarian protection – intervened when the Territorial Commission was unable to accept an application for international protection because the necessary conditions were not met, but the applicant's personal situation showed "serious humanitarian reasons". In this case, the Commission had to transmit the application to the *Questore*, who was obliged to issue a residence permit on humanitarian grounds (Marengoni 2012: 59–86).

Praxis shows as, over time, humanitarian protection has become a substitute for the right of asylum provided by Art. 10 III of the Italian Constitution. The permit for humanitarian reasons was issued to grant the principle of non-refoulement. In examining the consequences of a possible repatriation, under the prohibition to send a refugee back to territories where his/her life or freedom would be threatened, the territorial commissions had to consider granting a residence permit for humanitarian reasons. The humanitarian permit was therefore shaped as a third form of asylum, a "minor" asylum compared to the recognition of status and subsidiary protection, offering a concrete possibility of granting asylum in problematic cases deserving legal protection (Benvenuti 2018: 14–27).

According to the new Decree, the Territorial Commission can now either recognize two forms of protection – refugee or subsidiary protection – or dismiss the application, cooperating with one of the 103 *Questure* (Police Headquarters). According to the new provisions, the Commission no longer transmits the practice of the rejected application to the *Questore* if it argues "that there may be serious humanitarian reasons", but it simply verifies if there are causes for refusing the deportation of the foreigner demanding protection. Should this be the case, the

Commission transmits the documents to the *Questore* for a "special protection" residence permit, valid for a maximum of one year.

1.1. Critical Remarks

According to a Report issued by the Study Center of the Senate (Senato 2018: 8–9) – the second Chamber of the Italian Parliament – in order to grant humanitarian protection there must be "serious" or "grave" humanitarian reasons (in the first case, to be verified by the *Questore*, in the second case by the Territorial Commission, by a binding decision for the *Questore*). The list of these reasons is published in Art. 19 I of the Consolidated Immigration Law (Legislative Decree 286/1998), which declares: "In no case a deportation or refoulement can be ordered to a State where the foreign citizen may be persecuted on the basis of race, sex, language, nationality, religion, political views, personal or social circumstances, or there is a risk for him to be transferred to another State where he is not protected from persecution". With a sentence of February 2018, the Court of Cassation affirmed that humanitarian protection "although not being explicitly based on the obligation to implement international or European standards, [...] is nevertheless recalled by the EU Directive n. 115/2008", which clarifies that EU Member States may issue at any time an autonomous residence permit or another kind of document "for charitable or other humanitarian reasons", granting a foreign citizen the right to remain in Italy even if he or she illegally entered the Italian territory. Besides, the judges specify that the "serious reasons" for granting humanitarian protection "are not [definitely] predetermined, [...] by the legislator, so that they represent an open catalogue" to be expanded for further motivations over time. These motivations, however, pursue "the goal to protect situations of current or verified vulnerabilities (...) as a consequence of the foreigner's repatriation, if a need identified as humanitarian occurs, for example concerning fundamental human rights protected at constitutional and international level". Finally, "humanitarian protection represents one of the forms of implementation of constitutional asylum (according to Art. 10 of the Constitution), together with political and subsidiary protection, putting under evidence also the open and not predetermined conditions for its recognition, consistently with the broad configuration of the right to asylum granted by the Constitution, expressly referred to the impediment in the exercise of democratic freedoms, i.e. to a formulation which is not clearly defined and still subject to wide debate" (Cassazione Civile 4455/2018). The Court of Cassation has

therefore confirmed the open character of the humanitarian protection, and has thus recognized the right of residence, as well as a limit to expulsion and forced repatriation in various circumstances: circumstances that cannot be pre-determined, including all those situations of particular vulnerability when a person, despite not being able to benefit from international protection, must nevertheless be granted refuge in Italy and a residence permit, because otherwise his/her fundamental rights would be seriously threatened (Favilli 2018).

According to Lorenzo Trucco, lawyer and president of the Association of Juridical Studies on Immigration (ASGI), the new Decree represents "a serious violation of the legal culture of our country, an attack on fundamental human rights". So far, affirms Trucco, the problem was to guarantee the effectiveness of these rights, but the new rules lead a "real attack on individual freedoms, which are the foundations of our civilization" (Fassini 2018). The abolition of humanitarian protection could be unconstitutional, since "humanitarian protection is one of the ways Art. 10 of the Italian Constitution guarantees the right to asylum", whose par. 3 and 4 clearly state: "The legal status of foreigners is regulated by law in conformity with international provisions and treaties. A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence". A similar form of protection for foreigners exists in at least 27 European States (Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, the Netherlands, Poland, the United Kingdom, Slovakia, Slovenia, Spain, Sweden, Switzerland) (European Asylum Support Office 2017; EMN Ad-Hoc Query on ES Ad hoc Query on Humanitarian Protection 2017), and is consistent with the international asylum agreements. The new Decree risks turning many foreigners into illegal immigrants and increasing the number of judicial disputes, since all foreigners whose application for protection is dismissed will likely appeal recalling Art. 10 of the Constitution. According to Trucco, instead of increasing public security, the new provision will paradoxically create illegal migrants, due to the abolishment of humanitarian protection: thus, many people on the Italian territory will find themselves in an illegal situation.

The researcher Matteo Villa of the Institute for International Political Studies (ISPI) warns that the new Decree could produce further 60,000 new illegal immigrants in the next two years, since applications deserving a special residence permit will be very few. The 60,000 new illegal foreign citizens would add to the already foreseen

70,000, caused by denials of asylum, for a total amount of 130,000 in the next two years. A number which, at the current rate, would require 90 years to be repatriated – provided no further foreigners will reach Italy in the meantime. Therefore, the cancellation of humanitarian protection could deprive more than 40,000 migrants who applied for asylum in the period between October 2018 and February 2019 of any form of legal protection, making them irregular citizens (Villa 2018). Data provided by the Ministry of Interior indicate that in the period between December 2018 and February 2019, 19, 223 asylum seekers were denied any form of protection, while between December 2017 and February 2018 they were 11,043 (Ministero degli Interni 2019 d). This means that, with the entry into force of the Security Decree, the number of irregular citizens increased by more than 8,000 units, compared to the same period of the previous year.

Salvatore Fachile, ASGI lawyer and immigration law expert, believes that the new Decree violates both the Constitution and international law, as it authorizes a very limited and temporary form of protection for special cases, valid for only one year, not convertible into an official residence permit even if the migrant finds a stable accommodation. It can just be extended for one more year. Only those who already received humanitarian protection have time until it expires to prove that they have a work contract and stabilize their permit. According to Fachile, tens of thousands of migrants risk to become illegal, since many of them are socially integrated but work off the books.

Mario Morcone, former Head of Cabinet of the Ministry of the Interior, now President of the Italian Council for Refugees (CIR), believes that the new Decree aims more at creating irregularities than regulating immigration. According to Morcone, the new regulation intends to eliminate the possibility of granting a humanitarian permit to an asylum seeker who has completed a process of integration, increasing the precariousness of the migrant population in Italy (Fassini 2018).

According to Giuseppe Massafra, Confederal Secretary of the Italian General Confederation of Labor (CGIL), the repeal of the permit for humanitarian reasons will bring many workers back into the precariousness, especially in a moment when granting visas for work purposes has been blocked for years and since 2011 no plans grant access to the country for those looking for a job (Pollice 2018). CGIL source claims that the abolishment of residence permits for humanitarian reasons will leave or trap in precariousness many foreign citizens who held a residence permit so far, and will prevent almost all migrants from obtaining effective protection.

2. Extension of Detention in CPRs

According to the new Decree, foreign citizens held in Centers for Permanence and Repatriation (Centri di Permanenza per il Rimpatrio, CPR) – previously named Centers of Identification and Expulsion (Centri di Identificazione ed Espulsione - CIE) – waiting to be repatriated, may now be detained for up to 180 days (previously for a maximum of 90 days), in order to gain more time to complete their identification. Also asylum seekers may be detained in CPRs waiting to be identified.

The Decree is also controversial because in the past it was found that persons held in CPRs were held in very bad living conditions. After having visited four of the five operating CPRs between February and March 2018, in September 2018 the Independent Ombudsman for Prisoners' Rights published a report, condemning various critical issues such as "poor living and hygienic conditions, absence of psycho-physical activities, scarce openness to external initiatives, lack of transparency, i.e. absence of a recording system of critical events, carelessness for the legal conditions of the detained persons, their individual needs and vulnerabilities, difficulties in accessing information, absence of a complaint procedure against violations of prisoners' rights" (Garante Nazionale dei diritti delle persone detenute o private della libertà personale 2018a).

On 11 October 2018, the Head of the Immigration Department, Gerarda Pantalone, replied in a letter that Italy is "constantly engaged (...) in improving the structures and maintaining high standards of living, in full respect of individual rights", but that these efforts are "often thwarted by the continuous and violent behaviour of the guests [of the CPRs] against rooms and furnishing, with direct negative consequences on their own living conditions", with meaningful costs for the national budget (Dipartimento per le Libertà Civili e l'Immigrazione 2018).

2.1. Critical Remarks

On several occasions, the Italian Constitutional Court reminded that all restrictions of migrants' personal freedom must respect constitutional guarantees, even if they illegally entered the Italian soil (Corte Costituzionale 105/2001, 222/2004). Besides, prolonged detention time limits in CPRs could result in a violation of Art.

13 II of the Constitution, which declares "No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty, except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law". In 2016, the European Court of Human Rights condemned Italy for having held Ghanaian citizens applying for international protection in a CIE (now CPR) (ECHR 2016), in violation of Art. 5 I of the ECHR, which affirms "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law". The new Decree could therefore also be challenged in front of the Court of Strasbourg for the same reasons.

According to Patrizio Gonnella, President of both the Association "Antigone" and the *Coalizione Italiana Libertà e Diritti Civili* – CILD (Italian Coalition for Freedom and Civil Rights), due to the new Decree, the inefficiency of the Italian system in identifying refugees and asylum seekers could result in a limitation of their personal freedom, increasing the suffering of people held in CPRs without being convicted for any crime (Camilli 2018 b).

3. Detention in Hotspots and Border Crossings

According to Art. 3 of the Decree, asylum seekers can be held for up to thirty days in so-called Hotspots and first reception facilities (CAS – *Centri di Accoglienza Straordinaria*, Extraordinary Reception Centers, and CARA – *Centri di Accoglienza per Richiedenti Asilo*, Reception Centers for Asylum Seekers) to ascertain their identity and citizenship. If their identity is not verified within thirty days, asylum seekers may be held in CPRs for up to 180 days, which makes a possible maximum detention time of 210 days, only to verify and determine their identity, without them having committed any crime. The new rules also apply to minors who are part of a family unit, although the current legislation does not consent to such long detention times for minors. The Decree also allows to detain illegal immigrants in border offices, if no places are available in CPRs: such a measure must be authorized by the Justice of the Peace in charge of the procedure on request of the *Questore*, and it restrains migrants as long as they are not repatriated. If it seems necessary, the Justice of the Peace can authorize their stay "in suitable facilities" at the border office until their repatriation, but "no longer than 48 hours".

3.1. Critical Remarks

On 19 November 2018, in a hearing at the Constitutional Affairs Commission of the Chamber of Deputies, the Ombudsman for Childs' Rights Filomena Albano raised concerns about the consequences of the Decree for foreign minors. According to Albano, Hotspots are administrative detention centers not suitable for hosting foreign minors with their families or adults, who should therefore be housed in different facilities. All minors entering Italian soil should instead receive special residence permits, to be extended to all foreign adults who, with the abolition of humanitarian protection, would otherwise remain without any form of legal protection (Camilli 2018c).

On 15 October 2018, in a statement addressed to the Constitutional Affairs Commission of the Chamber of Deputies, the National Independent Ombudsman for Prisoners' Rights expressed strong concerns about the inadequacy and indeterminacy of new facilities designed to host migrants awaiting identification, since he would be prevented from controlling the quality of living conditions in such structures (Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale 2018b).

4. More Funds for Forced Repatriation, Less for Voluntary Repatriation

On the one hand, the Decree allocates more funds to the repatriation of illegal migrants: € 500,000 more in 2018, € 1.5 million more in 2019 and another € 1.5 million more in 2020. On the other hand, the Decree reduces the resources granted in 2017 by the Gentiloni Government to the municipal bodies for assisted voluntary repatriation, provided for foreigners who would freely return to their country of origin. In particular, € 3.5 million had been assigned for the three-year period 2018–2020: € 500,000 for 2018; € 1.5 million for 2019 and another € 1.5 million for 2020, which can now be used for any measures, not necessarily in support of voluntary repatriation.

5. Revocation or Denial of International Protection

The new regulation extends the list of crimes involving the revocation of refugee status or subsidiary protection. This happens when the refugee is definitively condemned for certain crimes, such as: threat or violence to a public official, serious and very serious personal injuries, practices of female genital mutilation, aggravated theft, housing theft and teared theft. Besides, the application for international protection may also be suspended when the applicant has a criminal proceeding in progress for one of the crimes that would result in the denial of asylum in the event of a final conviction. Furthermore, if the refugee returns to the country of origin, even temporarily, he or she will lose international and subsidiary protection.

5.1. Critical Remarks

According to the constitutional law scholar Gaetano Azzariti, this provision has the risk of being unconstitutional, because it can cause the suspension of the application for international protection and the consequent expulsion of asylum seekers still on trial or sentenced without final judgment: this would result in a violation of the presumption of innocence granted by art. 27 II of the Constitution, which states: "A defendant shall be considered not guilty until a final sentence has been passed".

Furthermore, the repatriation of foreign citizens not definitively convicted could infringe the principle of non-refoulement established by art. 33 of the Geneva Convention on Prohibition of expulsion or return ("refoulement"), which affirms: "1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country". According to this principle, a refugee cannot be prevented from entering the territory, nor can he or she be deported, expelled or transferred to

territories where his/her life or freedom would be threatened. The European Court of Human Rights decreed that the prohibition of refoulement applies regardless of whether the person has been recognized as a refugee, and/or whether he/she formalized a request to obtain such recognition. Refoulement consists of any form of forced removal to an unsafe country, and is in any case prohibited by international law, even against illegal immigrants sentenced without final judgment.

According to Luca Maria Negro and Giovanni Comba, respectively President of the FCEI – Federation of Evangelical Churches in Italy and President of the CSD-Diaconia Valdese, with the new Decree "we approve norms that seriously limit the right to asylum, coming to cancel the humanitarian protection [which helped] tens of thousands of people […] to rebuild their lives in Italy, escaping violence and persecution in their countries, or in those of transit like Libya. The possibility of forcing asylum seekers into closed prison facilities [...] criminalizes vulnerable people at a time when they would instead be more entitled to protection and integrated relief action." (Federazione delle Chiese Evangeliche in Italia 2018).

6. Accelerated Procedure Before the Territorial Commission

Art. 10 of the decree introduces an immediate proceeding before the Territorial Commission, the administrative authority responsible for examining applications from asylum seekers. Migrants facing a trial for certain kinds of crimes, or convicted by a court of first instance, must cope with an immediate procedure before the Territorial Commission. Appeal against a rejection of international protection by the Territorial Commission does not have suspensive effect: therefore, the protection seeker can be immediately expelled, even if the trial against him or her is not concluded or he/she is not serving a definitive conviction.

6.1. Critical Remarks

Comments about the new rules on revoking international protection apply in this case as well: expulsion is carried out in circumstances where no final conviction was

issued, or with the trial still in progress, when the expelled migrant should be still considered innocent according to the Italian constitutional warrants.

7. The List of Safe Countries

Article 7 *bis* of the new law establishes also for Italy a list of safe countries of origin. Both International (Geneva Convention) and EU law (Asylum Procedures Directive) classify a country as safe if it has a democratic system and hosts no persecution, torture or inhuman or degrading treatment or punishment, threat of violence and armed conflicts. The Ministry of Foreign Affairs – together with the Ministries of the Interior and Justice – draws up a list of safe countries of origin, on the basis of information provided by the National Commission for the Right to Asylum (*Commissione Nazionale per il Diritto d'Asilo*) and European and international agencies active in the field like EASO (European Asylum Support Office), UNHCR (United Nations High Commission for Refugees), Council of Europe.

An asylum seeker coming from one of the countries on the list will have to prove to have serious reasons for applying for asylum, and his/her application is to be examined under a "fast-track" procedure, whose time limits will be doubled compared to the usual procedure: 14 days for transmission to the Territorial Commission and 4 days for decision. According to art. 28 *bis* of Legislative Decree 25/2008, as soon as the application has been received, the Police Headquarter (*Questura*) in charge will immediately transmit the necessary documentation to the Territorial Commission, which will provide for the hearing of the asylum seeker within 7 days of receiving the documents, and must decide on the application within the following two days. Besides, an asylum application will now be considered as "manifestly unfounded" if related to following categories of migrants: citizens coming from countries of origin classified as safe, persons who made inconsistent statements, persons who gave false information or showed false documents, persons who refused to submit to fingerprints, persons already subject to administrative expulsion, persons who constitute a danger to law, order and security, foreigners who have irregularly entered Italian territory and have not immediately applied for asylum. In addition to the list of safe countries of origin, the decree introduces the principle of "internal flight", or "internal flight alternative": if a foreign citizen can be returned to certain areas of the

country of origin where it is assumed there is no risk of persecution, the application for international protection is rejected.

7.1. Critical Remarks

The Italian Council for Refugees (CIR) underlines that the new rule introduces an unfair "reversal of the burden of proof, contrary to the general principle of a shared burden between the state and the asylum seeker". In fact, it is now up to the applicant for international protection from a country classified as "safe" to prove there are serious reasons to consider the country of origin as unsafe. Moreover, the principle of "domestic flight" introduces "strong discretion in the examination of asylum applications" and "severely limits the possibilities of protection for asylum seekers", as it is easier to repatriate to areas considered safe in countries overall classified as unsafe (Consiglio Italiano per i Rifugiati 2018). The risk of repatriating migrants to dangerous areas is very high, also because many African countries have a very large territory, and a return away from the community of origin would entail serious difficulties for rejected migrants to reintegrate into politically unstable countries.

8. Restriction of the Reception System

In recent years, Italy has made great efforts to improve its reception system, in order to overcome emergency management of migrants. In 2018, there were 877 SPRAR (*Sistema di Protezione per Richiedenti Asilo e Rifugiati* – Protection System for Asylum Seekers and Refugees) projects providing reception services throughout the country, involving 1,200 Italian municipalities funded by the Ministry of the Interior. In 2009, SPRARs housed three thousand people, while in 2018 they hosted 35,881 migrants (Sistema di Protezione per Richiedenti Asilo e Rifugiati 2018). The idea behind this system was to distribute care services through the national territory, in accordance with the principle of solidarity and shared responsibility. From 2014 onwards, Italy has heavily invested in making the ordinary reception system predominant over the extraordinary one, even if 70 percent of asylum seekers are still hosted in CAS (*Centri di Accoglienza Straordinaria* – Extraordinary Reception Centres), i.e. in hotels, sheds and former barracks (a total of 136,978 places) (Centro

Studi e Ricerche IDOS 2018, 142), often far from urban areas, and in CARA (*Centri di Accoglienza per Richiedenti Asilo* – Reception Centres for Asylum Seekers). These facilities hosted people for months, even if the law prescribes a maximum stay of 35 days. CAS centers are managed by Prefects who can occasionally assign funds to private individuals, if it is necessary to create or enlarge local hosting capacity.

There are two fundamental differences between SPRAR and CAS centers: the kind of services offered for the same contribution (€ 35 per person per day) and the rules that apply in the two systems. SPRAR centers are subject to stricter reporting duties, offer higher quality standards and more articulated services. They are managed by local authorities and are obliged to spend all funds received in the project, since they are not allowed to make a profit. CAS centers, on the other hand, are managed by private individuals, which are directly funded by the Ministry of the Interior. They usually gather asylum seekers in large structures, with low standard services and no obligation to report expenses. CAS centers' hosting capacity can vary from few asylum seekers and refugees to hundreds of migrants. Fact is that so-called "Extraordinary Reception Centres" have become the main kind of facilities available to refugees in the Italian reception system, while SPRAR centers, which facilitate their real integration, remained the exception.

The new Decree states that SPRAR will be limited only to those who already enjoy international protection or are unaccompanied foreign minors. The entire local reception system will therefore be scaled down, while the name of the project will change from SPRAR (Protection system for asylum seekers, refugees and unaccompanied foreign minors) to SIPROIMI – *Sistema di protezione per titolari di protezione internazionale e per minori non accompagnati* (Protection system for holders of international protection and for unaccompanied foreign minors). Other asylum seekers, i.e. those who have applied for international protection and are awaiting a response, will be accepted by CAS and CARA.

8.1. Critical Remarks

Reducing the SPRAR system in favour of CAS and CARA centres could affect the quality of the integration process of asylum seekers, as so far migrants' integration projects have been mainly driven by SPRAR network. In fact, CAS and CARA centres focused on first reception measures, and did not carry out any projects aimed at

education, language teaching or vocational training. These are fundamental actions that enable holders of international protection to integrate into the social, civic and economic life of a country. SPRAR projects target smaller groups of migrants, are implemented on initiative of the related local authorities, and offer foreign people easier integration. CAS and CARA centres, on the other hand, are usually implemented by the Prefectures after consulting local authorities.

In cases of extreme urgency, however, the new Decree allows the Prefecture to enact procedures of direct entrustment, that is, without consulting, for example, the Municipality where the reception center is to be established. Moreover, reception projects in CAS and CARA usually host high numbers of applicants for international protection, with a much stronger impact on the affected local area. This can increase the risk of negative reactions from the local communities, especially when local authorities are not involved in creating and developing such centers. Finally, the projects carried out in CAS and CARA are subject to less strict controls than those prescribed for SPRAR projects: this could result in a higher danger of mismanagement of public funds than with SPRAR projects.

According to Daniela Di Capua, Director of the SPRAR Central Service, "since 2014 the Ministry [of the Interior] has decided to invest in the SPRAR system, because it was understood that it was important to finance integration, namely internships, work grants, language courses and then because in the SPRAR system there is a system of national control and coordination that prevents anomalies and criminal infiltration" (Camilli 2018d).

However, the growth of SPRAR centres will suffer a sharp slowdown, as the new Decree will gradually leave in these projects only the holders of international protection and unaccompanied foreign minors – several thousands of people. The number of the people hosted in reception facilities will instead depend on the number of landings on the Italian coast. If they remain very low, as they have been since June 2017, the number of asylum seekers in these facilities will also be low. However, the most important consequence of the new Decree could be that asylum seekers will not have access to integration services guaranteed by SPRAR projects: language lessons, vocational training, support for social inclusion through sporting, cultural or voluntary initiatives (Colombo 2018).

According to Gianfranco Schiavone, one of the creators of the SPRAR system and a member of the ASGI, over time CAS became infiltrated by criminal organisations, because the extraordinary reception system does not provide for any "expenditure control". While the 2015 law sought to unify SPRAR and CAS, according to Schiavone

with the new Decree the steps of reception are clearly separated: asylum seekers are housed in the emergency system, while refugees and minors are hosted in SPRAR centers, without any form of collaboration and convergence between the two networks. Schiavone emphasizes that CAS centers remain emergency structures violating European standards, while the detailed reception aimed at integration should be provided in SPRAR projects. Instead, the Decree will result in a drastic cut in the SPRAR network's resources, with a consequent loss of hundreds of jobs, especially in the South and in peripheral areas, in structures that will no longer have a reason to exist (Camilli 2018b).

According to Antonio Decaro, Mayor of Bari and President of ANCI (National Association of Italian Municipalities – *Associazione Nazionale Comuni Italiani*), "the SPRAR system has allowed the distribution of migrants throughout the national territory, avoiding the concentration of people in large centers and consequently reducing the social tensions created by these centers" (Camilli 2018b).

In a press release, Father Camillo Ripamonti, President of *Centro Astalli*, which is the seat of the Jesuit Refugee Service (JRS) in Italy, stated that the reduction of SPRAR projects is "a step backwards that does not take into account, on the one hand, the lives and stories of people and, on the other hand, the efforts of many humanitarian and civil society organizations to build in close collaboration with institutions, particularly local authorities, in a relationship of subsidiarity that has been the lifeblood of the welfare of our country. Criminalising migrants is not the right way to manage the presence of foreign citizens in Italy. Increasing grey areas, not regulated by law, and making the paths of legality less accessible and more complicated, contributes to making the country less safe and more fragile" (Centro Astalli 2018).

The Combonian fathers share the same opinion, and in a note on the Nigrizia.it website considered "a mistake the downsizing of the Protection System for Asylum Seekers (SPRAR) – one of the few successful examples of integrated reception carried out by municipalities in collaboration with voluntary associations – which will increase the number of illegal immigrants destined to languish in Extraordinary Reception Centres (CAS)" (Missionari comboniani 2018).

According to *Médecins sans Frontières*, the transition from SPRAR to CAS will reduce the quality of assistance for vulnerable people such as elderly, pregnant women, people with disabilities, single parents with minor children, torture or violence, which will be placed in centers providing no appropriate measures to their specific vulnerabilities (Medici Senza Frontiere 2019).

9. Exclusion from the Register of Asylum Seekers

Article 13 of the Decree states that the residence permit issued to asylum seekers is no longer valid for registration in the city registry office. Enrolment in the registry office is a prerequisite for accessing social assistance and being granted subsidies or benefits, access to other social rights, rights of popular participation in the local administration, right to submit statements in front of the registrar regarding citizenship, issuance of identity cards and certificates (since in Italy the identity card is a personal identification document that can be applied for by any foreign national older than 15 years of age holding a valid residence permit and a personal stay on Italian territory), and obtaining the Italian driving license or the conversion of a foreign one (Di Filippo 2018). The new Decree requires that access to those services is now available in the place of residence, while the previous regulation established that the reception centre or the hosting facility of an applicant with residence permit is the usual place for registration. It is worth noting that, according to Italian civil law, the residence is the usual place where a person is registered for social and fiscal purposes, while the domicile is an occasional place where the person stays for a certain period of time.

Finally, the Decree repeals Article 5-*bis*, which established the compulsory registration of the resident population of those applicants for international protection hosted in reception centres who are not already individually registered. The person in charge of the cohabitation is obliged to inform the competent registry office of the occurred change within twenty days. The provision applies to those hosted in first reception centres, temporary reception centres and centres of the protection system for asylum seekers and refugees – SPRAR, but not to asylum seekers detained in the former CIE, now CPR. Finally, the Decree provides that the communication of the revocation of the reception measures or the unjustified removal of the applicant for international protection is a reason for his/her immediate removal from the residents' registry.

9.1. Critical Remarks

The Decree justifies the prohibition of recording migrants in the population register with the argument that a residence permit for an asylum seeker is always temporary. The Decree also prescribes that the asylum seeker's legal status must be determined before he/she is entered in the register, since as long as his/her legal status has not been clarified, he/she cannot be included in the population register. The Italian Immigration Act, on the other hand, provides that insertion and changes into the residents' register of foreigners legally living in Italy are to be carried out under the same conditions as for Italian citizens, as stated by Art. 6 VII of the Legislative Decree 25 July 1998, n. 286, „*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*". The documented stay of the foreigner in a reception centre for more than three months allows the center to be considered a place of residence.

The decision not to allow the registration of asylum seekers with a valid residence permit could lead to a violation of Art. 3 of the Constitution, which protects the principle of equality before the law. Secondly, this prohibition will prevent access to social benefits and a wide range of public services, with a likely increase in the precariousness of foreign nationals seeking asylum in Italy. In particular, the lack of registration in the city registry office prevents access to basic health services. This could lead to a further cause of unconstitutionality, since the Decree prevents foreign citizens from enjoying the healthcare system, while the Italian Constitution grants this right not only to Italian citizens, but also to all individuals present on domestic territory. The non-enrolment in the city register could also hinder the exercise of some urban security functions assigned to mayors (including the duty to report to the judicial authorities and public security foreign EU and non-EU citizens present in the municipality, in order to eventually proceed to their expulsion or estrangement from the national territory, as foreseen by Art. 54 V of the Local Authorities Act), since for the proper exercise of these functions mayors must be able to know the place of habitual residence of individuals present in their municipality. In fact, Art. 54 IV of the Local Authorities Act requires the Mayor to take measures "to prevent and eliminate serious risks to public safety and the security of the city". According to Art. 54 IV *bis*, these measures on public safety "are aimed at protecting the physical integrity of the population, measures relating to urban safety are aimed at the occurrence of criminal phenomena or illegality, such as exploitation through

prostitution, trafficking in human beings, begging with the employment of minors and disabled people or phenomena of abuse such as illegal occupation of public spaces or violence, including those related to alcohol abuse or use of narcotics". If foreign asylum seekers are no longer registered in the local registry office, it becomes much more difficult to know their residence.

10. Withdrawal of Citizenship

The new Decree introduces the possibility to revoke citizenship of those who acquired it not for *Ius Sanguinis*: this affects foreign nationals who acquired the citizenship after ten years of residence in Italy, stateless persons who acquired citizenship after five years of residence in Italy, sons of foreigners born in Italy who acquired citizenship after 18 years, spouses of Italian citizens, foreigners of legal age adopted by Italian citizens, if they committed some terrorism-related crimes. The revocation is possible within three years from the final conviction for terrorism related crimes, by decree of the President of the Republic on proposal of the Minister of the Interior. The new Decree also extends from 24 to 48 months the deadline for concluding the procedures of granting citizenship.

10.1. Critical Remarks

According to the CIR, this provision creates "two categories of citizens: those by birth, whose citizenship cannot be withdrawn, and those who have acquired it for other reasons, whose citizenship can be unilaterally withdrawn" (Camilli 2018e). This provision is suspected to be unconstitutional for violation of Art. 3 of the Constitution, which protects the principle of equality before the law without distinction. Experts pointed out that this rule may favour the creation of stateless persons, in contrast with the prohibition of creating new stateless persons laid down in Art. 8 of the Convention on the Reduction of Statelessness adopted on 30 August 1961, stating that "a Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless", to which Italy adhered in 2015.

According to the Constitutional Law scholar Gaetano Azzariti, this provision is at great risk of unconstitutionality, because it states that even if the immigrant succeeds, after such a long bureaucratic process, to obtain Italian citizenship, he/she will never be considered as an equal of other Italian citizens. This aspect violates the equality rule (Art. 3 of the Constitution), because the Decree introduces unreasonable discrimination between citizens into the Italian legal system, and the prohibition of the deprivation of citizenship for political reasons (Art. 22 of the Constitution). In other words, if two individuals are found guilty of the same crime, those who have acquired citizenship for *Ius Sanguinis* would be treated differently from those who have acquired it by other means, because only the latter could lose citizenship. The already mentioned Research Dossier of the Senate of the Republic also stresses the need to verify that the new Decree does not introduce different categories of citizens suffering inappropriate unequal treatment (Senato 2018: 120).

Conclusions

On 7 January 2019, the Regional Council of Tuscany announced that it would challenge the decree before the Constitutional Court by the end of January. The announcement mentioned reasons, contradictions and suspected violations of the Decree: violations of fundamental rights; violations of the Regions' competing and exclusive jurisdictions; unconstitutional revocation of the residence permit for humanitarian reasons; unconstitutional prohibition of its renewal for those who have already received the permit; illegal prohibition of the enrolment of migrants in the local population register, even if they own a residence permit. Shortly after Tuscany's decision, the Regional Councils of Umbria and Emilia Romagna also agreed to challenge the Decree before the Constitutional Court, while Lazio, Sardinia and Piedmont are considering doing the same (Gagliardi 2019). Once the constitutional complaint has been lodged, however, it will take at least a year for the Constitutional Court to reach a decision. In view of the various questionable contents of the Decree, though, there are high chances that it might be declared unconstitutional. If it were to happen, the Decree would become ineffective.

According to legal scholars, the new Decree would even attempt to deprive migrants who arrived in Italy of their own fundamental rights (Curreri 2018). In this regard, it should be emphasized that when it comes to the legal status of the foreigner,

the Italian legislator must not only respect the constraints arising from EU Law and international obligations (according to Arts. 10 II, 11 and 117.I of the Constitution) but first of all the inviolable rights to be granted to each person under Art. 2 of the Constitution. In fact, even if formally referred only to citizens, Art. 2 "also applies to the foreigner, when it comes to respecting [his/her] fundamental rights" (Corte Costituzionale 120/1967). Therefore, the removal of any reference to compliance with international conventions and obligations, such as the refusal, revocation and renewal of residence permits (see, respectively, Arts. 5 VI of Legislative Decree 286/1998 and 13 I of Presidential Decree 394/1999) has no legal relevance, since they remain interposed parameters of constitutionality under Arts. 10 II and 117 I of the Constitution.

For all the above-mentioned reasons, therefore, the new Decree appears unconstitutional in many of its basic contents. The choice of a discipline so indifferent to constitutional guarantees shows that the current Government is trying to impose a very strict political position on the management of migrants, probably because it believes that for the moment the majority of public opinion is in favour of a worsening the reception system, regardless of the medium and long-term effects of the reform.

Irrespective of the eventual decision of the Constitutional Court, the new Decree will not only restrict the access to legal protection, but also gradually reduce services and benefits to migrants, an act unwise and potentially dangerous, because it will deprive more and more "irregular" foreigners of health protection, education and vocational training, pushing them towards precariousness, unevenness and unemployment. The final effect of this measure will therefore likely result in a gradual marginalization of foreign citizens, who will probably try to lead an existence at the limits of legality or even beyond, with a consequent increase in social insecurity: exactly the opposite of what the new Decree claims to want to achieve.

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Funkcjonowanie i ochrona opozycji parlamentarnej w Republice Słowackiej

Abstrakt

Artykuł podejmuje problematykę ochrony mniejszości politycznej w Radzie Narodowej Republiki Słowackiej oraz prawnej regulacji istnienia i działalności opozycji parlamentarnej w Republice Słowackiej. W kontekście prawnego status opozycji parlamentarnej dokonano oceny skuteczności wykonywania jej funkcji w prawnoustrojowym systemie Republiki Słowackiej. Zwrócono również uwagę na fakt, że chociaż prawny status opozycji parlamentarnej nie został expressis verbis określony w tekście Konstytucji Republiki Słowackiej, to wywodzi się on z podstawowych zasad demokratycznego państwa prawnego.

Słowa kluczowe: opozycja parlamentarna, mniejszość polityczna, parlament, konstytucja, Republika Słowacka.

Kody JEL: K100.

Functioning and Protection of the Parliamentary Opposition in the Slovak Republic

Abstract

The functioning and protection of parliamentary opposition in the Slovak Republic. The article discusses the issue of protection of a political minority in the National Council of the Slovak Republic as well as legal regulations concerning the existence and activities of parliamentary opposition in the Slovak Republic. It compares the legal status of parliamentary opposition with the actual possibilities to perform its functions within the legal system of the Slovak Republic. It points out the fact that the status of parliamentary opposition is not defined explicitly in the Constitution of the Slovak Republic but derived from the basic principles of a democratic state governed by the rule of law.

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Key words: parliamentary opposition, political minority, parliament, constitution, Slovak Republic.

JEL Classification: K100.

Wstęp

Istnienie opozycji politycznej jest powszechnie postrzegane jako charakterystyczna cecha demokratycznego państwa prawnego. Pojęcie opozycji jest często używane przez media, laików, a także przez naukowców, przede wszystkim w kontekście rozróżnienia członków organu ustawodawczego na przedstawicieli partii wchodzących w skład rządu i tych mu w parlamencie przeciwnych.

Termin „opozycja" w szerokim sensie oznacza „odrzucanie autorytetów" (Schüttenmeyer 2007: 374–375), co należy w praktyce rozumieć jako „całość wszystkich osób, ugrupowań, organizacji, zadań, działalności oraz zamiarów, które przeciwstawiają się osobom posiadającym władzę społeczną, duchowną lub polityczną" (Beck 1986: 675). Natomiast opozycja polityczna to „wszystkie partie i ugrupowania polityczne, które nie uczestniczą w sprawowaniu rządów, lecz zajmują krytyczną postawę wobec koalicji rządzącej (partii politycznej) i realizowanej przez nią polityki oraz dążą do przejęcia władzy w państwie, wykorzystując w tym celu zarówno zagwarantowane konstytucyjnie i ustawowo, jak też i inne, ale mieszczące się w ramach obowiązującego prawa, formy rywalizacji politycznej [...]" (Bożyk 2006: 20). Należy przyjąć, że opozycja polityczna „obejmuje także opozycję pozaparlamentarną" (Pawłowski 2010: 338). Pojęciem bardziej szczegółowym jest opozycja parlamentarna, która jest tworzona przez „partie polityczne reprezentowane w parlamencie, ale znajdujące się w danym momencie poza rządzącą koalicją i tym samym nieuczestniczące w kształtowaniu składu egzekutywy" (Bożyk 2010: 25).

Podstawowe funkcje opozycji politycznej w demokratycznym państwie prawnym to: „kontrola, krytyka, alternatywa" (Bożyk 2010: 52) – wszystkie trzy odnoszą się przede wszystkim do partii lub koalicji rządzącej. Opozycję polityczną można charakteryzować przy wykorzystaniu następujących kryteriów:

1) podmiotu – opozycja polityczna to ugrupowania polityczne posiadające pewien stopień instytucjonalizacji; zinstytucjonalizowane ugrupowanie opozycyjne, posiadające mandat w organie ustawodawczym, jest opozycją parlamentarną;

2) stosunku do rządu – opozycja polityczna odnosi się krytycznie do politycznego programu przedstawionego przez rząd oraz przedstawia alternatywę dla rządu (chociaż należy pamiętać, że zdarzają się również przypadki współpracy między rządem i opozycją);
3) działalności – opozycja polityczna bierze udział w wyborach, przedstawia alternatywne propozycje realizowania polityki;
4) celu – opozycja polityczna dąży do przejęcia władzy w państwie, w celu realizacji własnego programu politycznego, z którym bierze udział w wyborach.

Celem niniejszego artykułu jest analiza prawnoustrojowego statusu opozycji parlamentarnej w Republice Słowackiej, statusu posła Rady Narodowej Republiki Słowackiej oraz możliwości efektywnej działalności opozycji parlamentarnej w systemie politycznym Republiki Słowackiej. Istotne są dwie hipotezy: po pierwsze, zasada ochrony mniejszości zawarta w art. 12 Konstytucji RS gwarantuje również ochronę mniejszości politycznej; po drugie, Republika Słowacka, jako demokratyczne państwo prawne, zapewnia opozycji parlamentarnej środki umożliwiające skuteczną kontrolę rządu.

Wbrew uprawnieniom zawartym w ustawie zasadniczej może w praktyce dojść do sytuacji, kiedy opozycja parlamentarna nie ma realnych możliwości do ich wykonywania. Taka sytuacja miała miejsce np. w poprzedniej kadencji w niemieckim Bundestagu, kiedy parlamentarnej opozycji (Die Linke wraz z Die Grüne) przysługiwało 127 mandatów (20%), natomiast Ustawa Zasadnicza RFN jako konieczną do wszczęcia skargi konstytucyjnej lub powołania komisji śledczej zakłada jedną czwartą posłów (25%, czyli 158). To oznacza, że opozycja parlamentarna w niemieckim Bundestagu nie posiadała efektywnych instrumentów do wykonywania funkcji kontrolnej, aczkolwiek są one formalnie przewidziane w Ustawie Zasadniczej RFN. W tym kontekście zostaną porównane prawne regulacje z faktycznymi możliwościami ich wykonywania, a więc artykuł ten odpowie też na pytanie czy opozycja parlamentarna w Republice Słowackiej posiada możliwości efektywnego wykonywania swoich funkcji?

Metodą badawczą zastosowaną w tej pracy jest przede wszystkim analiza podstawowych aktów prawnych oraz literatury źródłowej z zakresu nauk prawnych i nauk o polityce; ponadto zastosowano analizę orzecznictwa Sądu Konstytucyjnego oraz Sądu Najwyższego Republiki Słowackiej i metodę komparatystyczną, celem porównania formalnie przewidywanych w przepisach prawa środków działalności opozycji parlamentarnej z możliwościami skutecznego wykonywania tych uprawnień.

Artykuł uwzględnia stan prawny na dzień 30 kwietnia 2019 r.

Prawnoustrojowy status opozycji parlamentarnej

Konstytucja Republiki Słowackiej z dnia 1 września 1992 r. nie zawiera w swoim tekście żadnej dosłownej wzmianki o opozycji politycznej. Republika Słowacka należy w ten sposób do grupy państw, w których status prawny opozycji politycznej w ramach ustroju państwowego nie jest uregulowany *expressis verbis* w przepisach ustawy zasadniczej. Pojęcie opozycji nie znajduje się nawet w Regulamine Rady Narodowej Republiki Słowackiej[1] (dalej: RN RS). Wbrew temu faktowi, status prawny opozycji politycznej wywodzi się z niektórych norm zawartych w Konstytucji RS oraz w treści innych aktów normatywnych niższej mocy prawnej.

Podstawowym wymogiem dla możliwości samego istnienia opozycji politycznej jest zasada demokratycznego państwa prawnego, którą przewiduje art. 1 ust. 1 Konstytucji RS: „Republika Słowacka jest suwerennym i demokratycznym państwem prawnym. Nie jest związana żadną ideologią ani religią".

Jeżeli opozycja polityczna będzie rozumiana jako ugrupowanie podmiotów, które nie wchodzą w skład rządu, to z takiej konstrukcji można wywodzić tezę, że jeżeli rząd posiada w organie władzy ustawodawczej większość mandatów, to opozycja polityczna stanowi w tym organie mniejszość polityczną. Ochrona mniejszości została zagwarantowana w art. 12 ust. 1 Konstytucji RS w brzmieniu: „Ludzie są wolni i równi w godności i w prawach. Podstawowe prawa i wolności nie mogą być odbierane, zbywane, nie ulegają przedawnieniu i uchyleniu". Cytowane postanowienie Konstytucji zapewnia tzw. równość wobec prawa, czyli zasadę, że „wszyscy ludzie są równi w sensie egzystencji fizycznej" (Palúš, Somorová 2014: 140).

W tym kontekście powstaje pytanie, czy zasada równości dotyczy członków opozycji parlamentarnej w sensie równości osób fizycznych w ich prawach politycznych. Sprecyzowaniem cytowanej normy konstytucyjnej jest art. 12 ust. 2 Konstytucji RS w brzmieniu: „Podstawowe prawa i wolności są gwarantowane na terytorium Republiki Słowackiej każdemu, bez względu na płeć, rasę, kolor skóry, język, wiarę i religię, przekonania polityczne bądź inne, pochodzenie narodowe lub społeczne, przynależność do narodowości lub grupy etnicznej, majątek, urodzenie albo inną okoliczność. Nikogo nie można z tych powodów krzywdzić, stawiać w sytuacji uprzywilejowanej albo dyskryminować". Sąd Konstytucyjny RS

[1] *Zákon č. 350/1996 Z. z. o rokovacom poriadku Národnej Rady Slovenskej republiky v znení neskorších predpisov.*

interpretował cytowany artykuł konstytucyjny w następujący sposób: „Postanowienie art. 12 ust. 2 Konstytucji ma charakter ogólny i deklaratywny, a nie ma charakteru podstawowego prawa i wolności. Jego zastosowania można się domagać jedynie w związku z ochroną konkretnych podstawowych praw i wolności zawartych w Konstytucji" (I ÚS 17/1999, 336). Moim zdaniem to orzeczenie Sądu Konstytucyjnego RS oznacza, że opozycja parlamentarna nie może się powoływać na art. 12 jako na normę gwarantującą ochronę mniejszości politycznej, gdyż treść Konstytucji RS nie zawiera prawnej regulacji opozycji.

Dalszą zasadę konstytucyjną, istotną dla egzystencji i działalności opozycji politycznej, stanowi zasada wolnej konkurencji sił politycznych. Konstytucja RS gwarantuje ją w treści art. 31 następująco: „Ustawowa regulacja wszelkich praw i wolności politycznych oraz jej wykładnia i stosowanie muszą umożliwiać i chronić wolną konkurencję sił politycznych w demokratycznym społeczeństwie. Sąd Konstytucyjny RS w odniesieniu do tego artykułu skonstatował: „Zasada konstytucyjna sformułowana w art. 31, według której ustawowa regulacja praw ustanowionych w art. 30 musi umożliwiać i wspierać wolną konkurencję sił politycznych w społeczeństwie demokratycznym, odnosi się nie tylko do wolnej rywalizacji między partiami i ruchami politycznymi. Wolna konkurencja sił politycznych istnieje również wewnątrz poszczególnych ruchów i partii politycznych [...]" (L ÚS 15/98).

Podstawą konstytucyjną dla powstawania i działalności partii politycznych w społeczeństwie jest prawo do zrzeszania się, przewidywane w art. 29 Konstytucji RS. Na podstawie ust. 2 tego artykułu „obywatele mają prawo zakładać partie polityczne oraz ruchy polityczne i zrzeszać się w nich". Porządek prawny przewiduje tylko dwie możliwe sytuacje, w których ograniczenie wolności zrzeszania się jest dopuszczalne:

1. Na podstawie art. 29 ust. 3 Konstytucji RS może dojść do ograniczenia wolności zrzeszania się „tylko w przypadkach określonych ustawą, jeżeli jest to niezbędne w demokratycznym społeczeństwie dla bezpieczeństwa państwa, ochrony porządku publicznego, zapobiegania czynom karalnym albo dla ochrony praw i wolności innych" (Ibidem).
2. Na podstawie §2 Ustawy nr 85/2005 o partiach politycznych i ruchach politycznych partia polityczna „nie może swoim statutem, swoim programem lub działalnością łamać Konstytucji RS, ustaw konstytucyjnych, ustaw i umów międzynarodowych" (Zákon č. 85/2005).

Działalność partii politycznej, niezgodnie z postanowieniami wyżej cytowanej ustawy o partiach politycznych i ruchach politycznych, stanowi powód do wniesienia wniosku do Sądu Najwyższego RS przez Prokuratora Generalnego o rozwiązanie

partii politycznej. Taki kazus miał miejsce 1 marca 2006 r. i dotyczył partii politycznej *Slovenská pospolitosť – Národná strana* (dalej: SP–NS). Sąd Najwyższy RS orzekł, że „realizacja programu SP–NS doprowadziłaby do ograniczenia praw i wolności osób przynależących do mniejszości narodowych lub grup etnicznych, czyli do naruszenia konstytucyjnej zasady równości przewidywanej w art. 12 ust. 1 Konstytucji RS" (Rozsudok Najvyššieho súdu SR zo dňa 1.3.2006: 7). Według orzeczenia Sądu Najwyższego RS „materialne przyczyny rozwiązania partii politycznej polegają na tym, że w społeczeństwie demokratycznym, budowanym na zasadzie równości człowieka i obywatela oraz na zasadach państwa prawnego, można planować zmiany w zasadach podstawowych wolności i praw obywatelskich i politycznych [...] tylko pod warunkiem, że planowana zmiana jest w zgodzie z podstawowymi zasadami demokratycznymi zawartymi w Międzynarodowym Pakcie Praw Obywatelskich i Politycznych" (Ibidem: 8).

Moim zdaniem z cytowanego wyroku Sądu Najwyższego wynika, że konstytucyjne i ustawowe postanowienia porządku demokratycznego w państwie prawnym oraz struktura poszczególnych organów władzy państwowej, stwarzają gwarancje prawne, których zadaniem jest zabezpieczenie przed upadkiem demokracji i państwa prawa jako takiego. Wspominana partia SP-NS spełniała łącznie wszystkie cztery kluczowe elementy opozycji politycznej, jednakże reprezentowała opozycję antysystemową, której zamiarem było usunięcie demokratycznego parlamentaryzmu i zastąpienie go „organizacją państwa na podstawie społeczeństwa klasowego", w którym uczestnictwo w wyborach wiązałoby się z przynależnością klasową. Zdaniem Sądu Najwyższego „doprowadziłoby to zdecydowanie do złamania zasady powszechnego prawa wyborczego" (Ibidem: 5). Konsekwentne przestrzeganie obowiązku poszanowania demokratycznego porządku państwowego oraz podstawowych zasad konstytucyjnych miałoby być moim zdaniem elementarnym kryterium oceny działalności partii politycznych w systemie prawnoustrojowym.

Interesującym faktem jest, że przewodniczącym rozwiązanej przez Sąd Najwyższy partii SP-NS był Marián Kotleba. W 2010 r., znajdująca się na marginesie sceny politycznej, „Partia Przyjaciół Wina" przekształciła się w partię Kotleba – Partia Ludowa Nasza Słowacja. Często jest ona uważana za kontynuatora działalności partii SP-NS, ale ze zmienionym programem politycznym. Po wyborach parlamentarnych w 2016 r., Prokurator Generalny, w ciągu dwóch miesięcy, otrzymał 160 wniosków o wszczęcie procedury rozwiązania tej partii (Zrušenie Kotlebovej strany..., 2016) a w maju 2017 r. zwrócił się z takim wnioskiem do Sądu Najwyższego, który w kwietniu 2019 r. wszczął procedurę rozwiązania partii, gdyż – według pozwu – partia dąży do likwidacji demokratycznego porządku. W dniu 29 kwietnia 2019 r.

Sąd Najwyższy odrzucił pozew stwierdzając, że partii nie można rozwiązać tylko dla tego, że krytykuje obecnie istniejący porządek prawny i bierze udział w debacie publicznej, powołując się na koncepcję demokracji zdolnej do obrony (*democracy capable of defending itself*) (Stanovisko pre médiá..., 2019).

Status posła Rady Narodowej Republiki Słowackiej

Władzę ustawodawczą w Republice Słowackiej sprawuje Rada Narodowa Republiki Słowackiej (RN RS), jako „wyłączny ustrojodawczy i ustawodawczy organ Republiki Słowackiej" (art. 72 Konstytucji RS). RN RS składa się ze 150 posłów, którzy są wybierani w powszechnych, równych i bezpośrednich wyborach, w tajnym głosowaniu, na czteroletnią kadencję. Cytowana norma konstytucyjna oznacza „powszechną demokratyczną zasadę reprezentacji obywateli w najwyższym organie władzy ustawodawczej" (Čič et al. 2012: 457). Posłowie piastują wolny mandat poselski i przy jego wykonywaniu nie są związani instrukcjami.

Rzetelne wykonywanie funkcji posła RN RS zgodnie ze swoim sumieniem i przekonaniem ma być zagwarantowane poprzez trzy instytucje prawa konstytucyjnego, których istotność, w odniesieniu do członków opozycji politycznej, jest niepodważalna:

1. **Immunitet materialny** (art. 78 ust. 2 Konstytucji RS) – stosowany jest przy głosowaniu i przemówieniach posła w RN RS oraz w jej komisjach. Oznacza to faktyczną bezkarność, czyli poseł nie może zostać pociągnięty do odpowiedzialności karnej w sytuacjach przewidywanych Konstytucją, na przykład nawet wówczas, gdy głosowałby za ustawami łamiącymi prawa człowieka, które nosiłyby znamiona przestępstwa (Majerčák 2009: 199).
2. **Immunitet formalny** (art. 78 ust. 3 i 4 Konstytucji RS) – poseł nie może bez zgody RN RS zostać aresztowany. „Jeżeli poseł zostanie schwytany i zatrzymany w trakcie popełniania czynu karalnego, właściwy organ jest zobowiązany niezwłocznie powiadomić o tym przewodniczącego RN RS oraz przewodniczącego Komisji Mandatowej i Immunitetowej Rady Narodowej Republiki Słowackiej. Jeżeli Komisja Mandatowa i Immunitetowa nie wyrazi zgody na zatrzymanie, poseł zostanie niezwłocznie zwolniony" (Ústavný zákon č. 239/2012).
3. **Prawo posła do odmówienia składania zeznań** (art. 79 Konstytucji RS) – „Poseł może odmówić składania zeznań w sprawach, o których dowiedział się podczas

wykonywania swojej funkcji, także wówczas, gdy przestał być posłem". Odmowa składania zeznań jest „prawem posła, nie jego obowiązkiem. (...) Jeżeli poseł ma złożyć zeznanie w sprawach, które nie są związane z wykonywaną przez niego funkcją posła, jest on w takiej samej sytuacji prawnej, co każda inna osoba będąca świadkiem" (Drgonec 2004: 471).

Rada Narodowa RS jest zdolna do podejmowania uchwał, gdy na sali obecna jest ponad połowa wszystkich posłów. Do przyjęcia zwykłej uchwały wymagana jest zgoda ponad połowy obecnych posłów (teoretycznie najmniejszą możliwą liczbą posłów potrzebną do przyjęcia uchwały jest 39).

Konstytucja stanowi, że zgoda trzech piątych wszystkich posłów wymagana jest do „uchwalenia Konstytucji, zmiany Konstytucji, ustawy konstytucyjnej, na wyrażenie zgody z umową międzynarodową o której mowa w art. 7 ust. 2 Kostytucji, do przyjęcia uchwały o głosowaniu ludowym w sprawie odwołania Prezydenta RS, do złożenia oskarżenia Prezydenta RS i do wypowiedzenia wojny innemu państwu". W takich przypadkach zazwyczaj Rząd lub koalicja rządowa nie posiada odpowiedniej liczby mandatów i dlatego nieodzowne jest poszukiwanie konsensusu we współpracy z opozycją parlamentarną. Jest to typowy przykład współdziałalności opozycji z większością rządową w modelu koncyliacyjnym, który stosowany jest również na Słowacji.

Podstawowym indywidualnym prawem każdego posła w myśl art. 80 Konstytucji RS jest możliwość złożenia interpelacji do Rządu RS, do członka Rządu RS, albo kierownika innego centralnego organu administracji państwowej w sprawach leżących w zakresie ich kompetencji. Interpelacja, wedle prawnej definicji, to „specjalistyczne pytanie do członków Rządu, odnoszące się do kwestii wykonywania ustaw, realizowania programu działania Rządu oraz uchwał Rady Narodowej" (Regulamin RN RS). Instytucja interpelacji składa się z dwóch elementów: „(a) ze złożenia interpelacji w formie pisemnej lub przeczytania jej na posiedzeniu RN RS, (b) z odpowiedzi na interpelację wraz z debatą nad odpowiedzią, z wypowiedzi posła składającego interpelację oraz z zajęcia stanowiska przez RN RS. Prawną relewancję posiada tylko odpowiedź pisemna, po której doręczeniu poseł składający interpelację wypowiada się, czy uważa odpowiedź za wystarczającą" (*Stanoviská ústavnoprávneho výboru*... 2012: 79–80). Następną debatę o odpowiedzi na interpelację można według art. 80 ust 2 Konstytucji RS połączyć z głosowaniem nad wotum zaufania.

Kolejną formą parlamentarnej kontroli Rządu, która przysługuje poszczególnym posłom, jest godzina pytań, w ramach której „członkowie Rządu, Prokurator Generalny oraz Prezes Najwyższego Urzędu Kontroli Republiki Słowackiej udzielają odpowiedzi na aktualne pytania, przede wszystkim z zakresu ich działalności,

pisemnie zadane przez posłów [...]" (Regulamin RN RS, §131). W odróżnieniu od instytucji interpelacji, postanowienia Regulaminu RN RS nie pozwalają w ramach godziny pytań przyjąć konkretnych środków i składać propozycji proceduralnych.

Poseł lub grupa posłów mogą przeprowadzić wywiad poselski „celem ustalenia w jaki sposób dotrzymywane i wykonywane są ustawy i czy zarządzanie środkami publicznymi jest zgodne z ustawami" (Ibidem). Podmioty ogólnie wymienione w cytowanym postanowieniu ustawy, wobec których to kontrolne uprawnienie jest wykonywane, „zobowiązane są dostarczyć posłowi lub grupie posłów informacje, wyjaśnienia i inne dokumenty wiążące się z wykonywaniem wywiadu poselskiego [...]" (Ibidem). Z mojego punktu widzenia, istnieje wątpliwość, co do realnej możliwości wykonywania tego uprawnienia przez opozycję polityczną ze względu na fakt, że do wykonania wywiadu poselskiego niezbędne jest upoważnienie udzielone przez Radę Narodową lub jej Komisję. Oznacza to, że wniosek opozycji o wykonanie wywiadu poselskiego w pewnych przypadkach nie musi zostać zatwierdzony przez Radę Narodową lub przez większość członków Komisji.

Jedna piąta posłów RN RS jest uprawniona do wszczęcia postępowania przed Sądem Konstytucyjnym RS. Oznacza to, że wniosek o wszczęcie postępowania może zostać złożony przez grupę co najmniej 30 posłów (20% posłów). Taka regulacja umożliwia obecnie opozycji politycznej wszczęcie postępowania przed Sądem Konstytucyjnym. Z reguły chodzi o kontrolę zgodności przepisów prawa z Konstytucją. J. Ondrová oprócz tego stwierdza, że ważnym uprawnieniem mniejszości parlamentarnej jest wszczęcie postępowania o zgodności z Konstytucją decyzji o zarządzeniu stanu nadzwyczajnego albo stanu klęski. „Nie można pominąć możliwości realizacji kontroli przez mniejszość parlamentarną, w celu ustalenia czy nie doszło do nadużycia władzy – w przypadku, gdy wniosek o wszczęcie postępowania przed Sądem Konstytucyjnym składają posłowie RN RS" (Ondrová 2010: 149). Dla porównania np. Ustawa Zasadnicza RFN wymaga większej liczby posłów – aż 25% – jednak opozycja polityczna poprzedniej kadencji nie posiadała realnych możliwości wykorzystania instytucji wszczęcia postępowania przed Sądem Konstytucyjnym; natomiast Konstytucja RP w takich sytuacjach wymaga poparcia wniosku przez zaledwie 11 proc. wszystkich posłów.

Możliwość aktywnego uczestniczenia opozycji parlamentarnej w procesach kontrolnych istnieje także przy nadzorowaniu przebiegu wyborów oraz kontroli finansowania partii politycznych w ramach Państwowej Komisji ds. Wyborów i Finansowania Partii Politycznych (Orosz 2015: 226). W skład Komisji wchodzi 14 członków, z których 10 jest mianowanych przez partie polityczne, „które proporcjonalnie, w zależności od liczby mandatów, uzyskały w ostatnich wyborach

prawo reprezentacji w RN RS. Liczba członków Państwowej Komisji mianowanych przez partie polityczne wchodzące w skład Rządu musi pozostać równa liczbie członków mianowanych przez resztę partii politycznych zasiadających w RN RS. Ta równowaga musi zostać zachowana przez cały okres działalności Państwowej Komisji" (Zákon č. 180/2014, §13). Postanowienia ustawy *expressis verbis* podkreślają zasadę proporcjonalnej reprezentacii partii politycznych oraz zasadę równowagi reprezentacji Rządu i opozycji parlamentarnej, które muszą być przestrzegane podczas całej kadencji Komisji.

Opozycja parlamentarna w organach wewnętrznych Rady Narodowej Republiki Słowackiej

Organami wewnętrznymi RN RS są Przewodniczący RN RS, Wiceprzewodniczący RN RS oraz komisje RN RS (Svák, Cibulka 2007: 229). Tryb ich powoływania w życie ustanawia Regulamin RN RS, według którego Przewodniczący RN RS jest wybierany przez Radę Narodową w sposób tajny, większością głosów wszystkich posłów (Stanoviská ústavnoprávneho výboru...: 79–80). Analogicznie postępuje się w przypadku wyborów Wiceprzewodniczących RN RS. W odróżnieniu od Sejmu RP, postanowienia Regulaminu RN RS nie przewidują żadnej minimalnej liczby posłów wymaganej na podanie kandydatury na Przewodniczącego lub Wiceprzewodniczącego RN RS. Oznacza to, że kandydaturę mogą zgłaszać także członkowie opozycji politycznej, jednak liczba wiceprzewodniczących reprezentujących opozycję polityczną oraz wybór poszczególnych kandydatów będą zależne przede wszystkim od zgody koalicji lub partii rządzącej.

Przewodniczący RN RS zwołuje i przewodniczy posiedzeniom RN RS. Jeżeli sesja RN RS zostanie przerwana, wniosek o ponowne zwołanie sesji przed wyznaczonym terminem może złożyć jedna piąta posłów. Z takiej możliwości mogą również korzystać członkowie opozycji parlamentarnej w liczbie 30 posłów. Przewodniczący ma obowiązek pozytywnego rozpatrzenia takiego wniosku w terminie nie przekraczającym 7 dni. Postanowienia Regulaminu RN RS nie ustalają liczby Wiceprzewodniczących RN RS. W obecnej VII kadencji (2016–2020) liczba Wiceprzewodniczących wynosi 4, w tym jeden jest przedstawicielem opozycji parlamentarnej.

Komisje RN RS są organami uprawnionymi do podejmowania inicjatywy ustawodawczej oraz do kontrolowania rządu. Rada Narodowa RS *ex lege* powołuje Komisję ds. Mandatów i Immunitetów Poselskich, Komisję ds. Niepołączalności

Mandatu Poselskiego, Specjalną Komisję ds. Kontroli Działalności Słowackiej Służby Informacyjnej oraz Specjalną Komisję ds. Kontroli Działalności Wywiadu Wojskowego. Dalsze komisje, według potrzeb, powołuje RN RS i ustala zakres ich działalności. Zasadę proporcjonalnej reprezentacji partii politycznych Regulamin RN RS zachowuje tylko w przypadku Komisji ds. Niepołączalności Mandatu Poselskiego oraz Komisji ds. Mandatów i Immunitetów Poselskich[2]. Teoretycznie nie można wykluczyć sytuacji, że miejsca w niektórych komisjach zostałyby zajęte wyłącznie przez posłów partii rządzących, a inne komisje tylko przez posłów należących do opozycji politycznej. W praktyce taka sytuacja zdarzyła się podczas I kadencji RN RS (1994–1998), gdy miejsca w Komisji Ochrony Środowiska zostały zajęte przez członków opozycji parlamentarnej (w języku potocznym komisja ta otrzymała miano „Komisji Skazańców"). Posłowie opozycji parlamentarnej zarzucali w tamtym czasie partii rządzącej HZDS (pol. Ruch na Rzecz Demokratycznej Słowacji), że obsadzała ona funkcje Przewodniczących i Wiceprzewodniczących komisji tylko posłami koalicji, jedynie w przypadku tzw. Komisji Skazańców zasadę tę odrzuciła (Jozef Zlocha nechce byť... 1994). Podczas VII kadencji (2016–2020) istnieje 19 komisji, w tym przewodniczącymi 8 komisji są posłowie przynależący do opozycji parlamentarnej.

Uchwały w komisjach są przyjmowane większością obecnych na posiedzeniu posłów. Mniejszość polityczna jest uprawniona, na wniosek któregokolwiek z obecnych członków komisji, do zajęcia odrębnego stanowiska wobec uchwały przyjętej przez większość członków komisji, jeżeli przynajmniej jedna trzecia członków komisji nie zgodziła się na przyjęcie uchwały. Ta instytucja w pewnym sensie odpowiada instytucji wniosku mniejszości na podstawie Regulaminu Senatu RP (art. 62).

Posłowie należący do tej samej partii politycznej tworzą w RN RS kluby poselskie. Według postanowień Regulaminu RN RS podstawą do tworzenia klubów poselskich jest przynależność posłów do partii politycznych, które reprezentują w RN RS. Minimalna liczba posłów potrzebna do założenie klubu poselskiego to 8. Kluby poselskie zakładane są podczas pierwszej sesji RN RS. Równocześnie istnieje zasada, że poseł może zostać członkiem tylko jednego klubu poselskiego. Na początku VII kadencji (2016-2020) w RN RS istniało 8 klubów poselskich – 4 należące do partii rządzących i 4 opozycyjne.

[2] „Członkowie Komisji ds. Niepołączalności Mandatu Poselskiego oraz Komisji ds. Mandatów i Immunitetów Poselskich są wybierani na podstawie zasady proporcjonalnej reprezentacji partii politycznych i ruchów politycznych w Radzie Narodowej" (Regulamin RN RS, § 7).

Tabela 1: Przegląd przynależności posłów VII kadencji do klubów poselskich. Stan na marzec 2016 r.

Koalicja		Opozycja	
Klub poselski	Liczba posłów	Klub poselski	Liczba posłów
SMER-SD	49	SaS	21
SNS	15	OľaNO	19
MOST–HÍD	11	Kotleba–ĽS NS	14
SIEŤ	10	SME RODINA–Boris Kollár	11
Razem	85 (56,7%)	Razem	65 (43,3%)

Źródło: Opracowanie własne.

W ciągu kilku miesięcy podział sił między koalicją i opozycją nieznacznie się zmienił. Powodem tego był przede wszystkim fakt, że kilkoro posłów należących do partii Sieť (pol. Sieć) oraz Most-Híd odmówiło współpracy z partią Smer pod przewodnictwem Roberta Fico. Klub poselski Sieť w sierpniu 2016 r. zgodnie z prawem przestał istnieć w momencie, gdy liczba jego członków obniżyła się do liczby mniejszej, niż stanowi liczba wymagana do istnienia klubu poselskiego w ogóle (8).

Tabela 2: Przegląd przynależności posłów VII kadencji do klubów poselskich. Stan na kwiecień 2019 r.

Koalicja		Opozycja	
Klub poselski	Liczba posłów	Klub poselski	Liczba posłów
SMER-SD	48	SaS	20
SNS	15	OľaNO	16
		Kotleba–ĽS NS	13
MOST–HÍD	13	SME RODINA–Boris Kollár	8
		Bez przynależności	17
Razem	76 (50,7%)	Razem	74 (49,3%)

Źródło: Opracowanie własne.

Kluby poselskie w RN RS nie posiadają uprawnień o charakterze zasadniczym, ale mają funkcję bardziej organizacyjną i proceduralną. Wśród ich uprawnień są m.in. (Regulamin RN RS, § 13, 24, 27, 136):

- uprawnienie do składania na pierwszym posiedzeniu RN RS kandydatury na Przewodniczącego i Wiceprzewodniczących RN RS włącznie z propozycją na stanowienie ich liczby;
- na podstawie propozycji przynajmniej trzech klubów poselskich – uprawnienie do złożenia propozycji nowego punktu w porządku dziennym posiedzenia RN RS;

- uprawnienie do złożenia wniosku o wszczęcie postępowania dyscyplinarnego w sprawie poważnego złamania ślubowania poselskiego, a także gdy poseł czuje się obrażony wypowiedzią innego posła w RN RS lub w jej organie;
- uprawnienie upoważnienia jednego ze swoich członków do wystąpienia w imieniu klubu w dyskusji, w takim przypadku Przewodniczący upoważnia tego członka do zabrania głosu jako pierwszemu, jeżeli został on zgłoszony do udziału w debacie.

Wnioski

Treść Konstytucji Republiki Słowackiej nie zawiera *expressis verbis* pojęcia opozycji politycznej ani jej bezpośredniego uregulowania. Natomiast podstawowym zadaniem demokratycznego państwa prawnego jest stwarzanie warunków dla wolnego zrzeszania się obywateli w ugrupowaniach politycznych, zapewnianie ich wolnej rywalizacji w wyborach oraz umożliwianie wolnej rywalizacji wewnątrz ugrupowań politycznych. Działalność niektórych organów wewnątrzparlamentarnych oraz funkcje, które parlament pełni w demokratycznym państwie prawnym, odzwierciedlają praktykę odnośnie statusu prawnego opozycji politycznej.

Orzecznictwo Sądu Konstytucyjnego Republiki Słowackiej nie wskazuje na fakt, że ochrona mniejszości politycznej przewidywana w art. 12 Konstytucji RS oznaczałaby ochronę przed decyzją wiekszości parlamentarnej, natomiast ta norma konstytucyjna powinna w praktyce być przestrzegana jako prawna gwarancja dla konstruktywnej dyskusji w organie ustawodawczym oraz jako prawo wyrażania własnej opinii w procesie podejmowania decyzji przez parlament. Szczególne znaczenie dla niezależności posła mają następujące instrumenty prawne: immunitet materialny, immunitet formalny oraz prawo posła do odmowy składania zeznań.

Podstawowym prawem, jak i jednocześnie obowiązkiem posła, jest aktywne branie udziału w dyskusji na forum organu ustawodawczego. Opozycja parlamentarna posiada prawo do składania interpelacji do Rządu lub kierowników centralnych organów władzy państwowej. Ma ona także prawo przeprowadzania wywiadu poselskiego oraz składania wniosków o wszczęcie postępowania przed Sądem Konstytucyjnym w sprawie zgodności przepisów prawa z Konstytucją.

Porównując zakres uprawnień opozycji parlamentarnej z możliwościami ich realnego zastosowania, należy stwierdzić, iż opozycja parlamentarna w Republice Słowackiej w obecnej VII kadencji ma do dyspozycji dostarczającą ilość środków

do sprawowania swoich podstawowych funkcji i rzetelnego pełnienia swojej roli. Ich realne i efektywne wykorzystywanie jest jednak w chwili obecnej utrudnione z powodu znacznej fragmentaryzacji opozycji politycznej na słowackiej scenie politycznej.

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The European Union–Turkey Statement on Refugees: a Deal on the Verge of Collapse?

Abstract

The Syrian War has brought about one of the greatest refugee crises of our time. Turkey represents a country that many refugees pass through in order to reach Europe, where supposedly they can find a better life. In order to be able to cope with the thousands of refugees that cross the Turkish border, the EU and Turkey have agreed on the "EU–Turkey Statement on Refugees" that was implemented in order to lower the number of irregular migrants coming from the Middle Orient, as well as to reduce migrant deaths, smuggling and human rights violations. The purpose of the article is to shed light on the main reasons why Turkey lacks commitment to the Statement. The article is composed of four parts. The first section elaborates on the deal itself, the conditions of the statement and the action points that were established. The following part outlines the opinions of the countries involved and the perspectives of the refugees on the EU–Turkey Statement. The third section contains a quantitative analysis in order to evaluate the efficiency of the deal, while the last section focuses on the influences of the Turkish coup d'état on the deal and the reasons for Turkey's lack of commitment to the Statement. The findings show that for the deal to be functional both parties have to prove commitment; in the case of Turkey, financial reasons, visa-free travel and reopening EU accession talks seem to be the key factors necessary for proper commitment.

Key words: illegal migration, EU–Turkey Statement, refugees, diplomacy, human rights, border security, Turkish Coup d'État.

JEL Classification: F51, F53, H11, H12, F22.

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Introduction

Beginning with 2015, more than one million immigrants and refugees crossed the European border, bringing about a crisis that was hard to handle by European Countries. In the upcoming year, Europe had to face an unprecedented refugee crisis; people inhabiting Syria and the neighbouring areas had to flee their homes in order to seek asylum, choosing Europe as a new home-continent.

The Syrian refugee crisis, known as one of the "greatest humanitarian crises in a generation" (DipNote Bloggers 2015) was brought about by the destructive conflict of the Syrian War that began in 2011. The war has immersed the country in an ongoing, multifaceted war that destroyed the economy, the infrastructure and the national wealth of the country. According to the UNHCR (the United Nations High Commissioner for Refugees), over 5.6 million people have left Syria since 2011. A number of 6.6 million people have been internally displaced and 13.1 million were in need of humanitarian assistance (UNHCR 2018). Up to October 2019, 5.4 million Syrian refugees have been registered in different countries of asylum (UNHCR 2019). Neighbouring countries such as Turkey, Lebanon and Jordan have received about three quarters of the Syrian refugees. Turkey, for instance, which currently hosts 3.6 million refugees, acted like a buffer zone between the Middle East and Europe, representing one of the first places where refugees head in case of need. Jordan houses 654.955 Syrian refugees, which represents 10 percent of the population, while Lebanon is the home of 919.578 refugees, which means one in five people is a refugee from Syria (UNHCR 2019).

Despite being able to flee to neighbouring countries, why do refugees flee to Europe as well? Amnesty International states that 93% of the refugees in Jordan, for example, are living in very poor conditions; the same situation happens in the case of Lebanon (70%), Egypt (37%) and Iraq (37%). Moreover, countries having high revenues, like the United Arab Emirates, Qatar, Saudi Arabia, Kuwait, Bahrain, Russia, South Korea, Singapore have offered no resettlement places to Syrian refugees (Amnesty International 2016). Even though Jordan is making efforts to supply all the refugees from the country with basic services such as food, sanitation and health care, refugees see themselves obliged to search for a better life, preferring the rich countries in Europe. In addition, according to „The Telegraph", the Lebanese government is not able to provide its own citizens with steady electricity, or not even with sufficient rubbish collection service (King's College London 2015). Although the UN assists

the countries in need, the possibility to care for the masses is reduced. Another reason is that refugee children do not get proper education, the adults are not given the possibility to work, media is revealing Europe as a continent which has its doors open for refugees, and last, but not least, the Syrian War does not seem to be able to come to an end very soon (Fleming 2015). For instance, in Turkey refugees find it hard to integrate in the Turkish community since they are not legally recognized as refugees and most of them do not obtain legal employment. The High Commissioner for Refugees has come up with a new legislation that allows Syrian refugees work permits; still, it remains unclear whether they will be put into practice. Amira, 42, believes she was lucky that she found a job in Turkey (Democratic Progress Institute 2016: 66–67).

In 2015, the Greek islands became the top destination for migrants seeking to enter Europe by sea. Therefore, Turkey evolved into the main transit country to reach Europe. It is undoubtedly the fact that the migration crisis is not only a threat for the very foundations of the European Union-unity, tolerance and solidarity, but also to its relations with Turkey. The EU and Turkey need each other in order to cope with the refugee crisis. The unprecedented rapprochement took place in the form of the EU-Turkish Statement on Refugees agreed on March 2016, a deal intended to control irregular migration flows towards Europe. There is still doubt on whether the deal is a sincere commitment in order to strengthen the relation between the two or if it is just a transactional approach, as Laura Battalla Adam, an expert in EU–Turkish relations, states (Batalla Adam 2016: 2). These being affirmed, the primary aim of this article is to explore the main reasons on Turkey's lack of commitment to the EU–Turkish deal. The Statement, constituting the independent variable, is worth to be given due consideration since it is a peculiar form of external cooperation in order to restrict refugees to cross the EU borders. The dependent variables such as the number of migrants that arrived after the Statement have been agreed on, and the resettlements under the EU–Turkey Statement will be analysed in the article. Moreover, the EU––Turkish relations under the Statement will also be presented, together with the reasons that prompted Turkey to threaten to break the deal.

The article is composed of four sections. The first section elaborates on the deal itself, the conditions of the statement and the action points that were established. The following part focuses on the opinions of the countries involved and the perspectives of the refugees on the Agreement. The third section involves a quantitative analysis in order to prove or refute the efficiency of the deal. The last section will focus on the influences of the Turkish coup d'état on the deal and the reasons for Turkey's lack of commitment to the deal.

Literature Review

The EU–Turkey Statement has been controversial since its introduction. It opened the floor to a large debate on various levels and many scholars have therefore tried to shed light on the adopted policies, their implementation and the future implications that the EU–Turkish Statement might trigger.

Laura Batalla Adam, in her paper, stresses the need for Turkey and the EU to work together in order to handle the refugee crisis, underlining that failure to cooperate might undermine EU–Turkish relations; it is a "necessary but uncertain deal" (Batalla Adam 2016: 2). Başak Kale pointed out the potential of the EU–Turkey Statement to revitalize the two actors' relations, bringing new hopes of cooperation into the fight against terrorism, security efforts and the strengthening of border controls (Kale 2016: 3).

While some scholars saw the Statement more optimistically, some critical approaches regarding the Statement and the actors involved also surged. Concerning the legal aspects, it was debated that Turkey has a young legal system, limited resources, and its status as a "safe third country is questionable" (İçduygu and Millet 2016: 3). Discriminations on grounds of nationality were noticed by researchers in asylum case management and police practices; moreover, fast-track asylum procedures should not replace quality assessment, guaranteeing at the same time access to the asylum system for migrants (van Liempt et al. 2017: 28–29).

Some researchers argued that the EU wanted to externalize the migration issue after failed attempts to relocate asylum seekers within EU Member States (Toygür and Benvenuti 2017: 1–3). Özgehan Şenyuva and Çiğdem Üstün outline that the EU–Turkish Statement was converted into a bargaining matter, drifting away from its initial role of representing a cooperation opportunity (Şenyuva and Üstün 2016: 3), a fact that appears in the work of Hafferlack and Kurban "What is more, the EU effectively jeopardises the refugees' safety by allowing the Turkish regime to use them as a bargaining chip to push through its own demands" (Haferlach and Kurban 2017: 88).

While the existing literature regarding the EU–Turkey Statement offers a rich overview on the EU–Turkey Statement, the question of Turkey's reluctance to keep its commitment to the EU–Turkey Statement needs to be given more insight taking into account the various internal and external factors that could contribute to it. A very interesting approach can be found in the "European Union in Crisis" where the authors put forward the "asymmetric relation" between Turkey and the EU,

Turkey playing a key role in solving the migration crisis. The fact that Turkey has higher leverage in this situation – since the EU cannot really afford to wait – allowed Turkey to ask a high price for its cooperation – visa free entry for Turkish citizens into the Schengen Area, financial incentives and progress in the accession process. EU member states view these with caution and politically unacceptable in some cases (Dinan, Nugent and Paterson 2017: 366).

Methodology and Research Design

This section of the article describes the research plan, the methods used to investigate the research problem and the primary and secondary sources of data examined.

The article comprises of an introduction, a methodology and design section, the theoretical framework where the EU–Turkish deal is explained, the analysis of the efficiency of the deal, the perspectives of the countries involved and of the refugees regarding the agreement. The principal reasons for which the deal was controversial from the beginning and the main arguments for which Turkey does not keep its promises are also tackled in the article. Moreover, the article concludes with the findings that were discovered throughout the research. The scientific article is based on a mixed approach. The empirical technique is used in this paper in order to explore the causes of the fragility of the EU–Turkish Deal, together with the quantitative examinations of some statistics published by FRONTEX and in the three Reports made by the European Commission after signing the Statement. The interpretive approach is used since it provides an all-comprehensive understanding of the subject, having the aim to find an interpretation for this political circumstance. Examining and analysing the materials for the chosen topic, the researcher can get an insight into understanding the attitudes and perspectives of the actors who have a stake in the EU–Turkish Statement. The interpretation and examination of qualitative data represents an exceptional foundation to reveal the findings and to reach the conclusions for the research question. In order to reach a certain conclusion, primary and secondary sources are used. As primary sources, parts of the treaties are used, as well as official documents that convey important and official information regarding the Statement. Moreover, the research is also based on interview transcripts, letters and video footages. Secondary sources also include books and newspaper articles that describe the events when they took place. The author proposes a compilation

and interpretation of valuable EU Documentation, reports, insights from various researchers regarding the EU–Turkish Statement with the aim of having an overview of the most important findings in the field up to this stage. Considering the nature of the topic, this article offers a different perspective on tackling the EU–Turkey Statement.

1. The European Union–Turkish Deal: Facts and Action Points

The EU–Turkish Statement, having its roots in the 29th of November 2015 EU–Turkey Joint Action Plan, was implemented on the 18th of March 2016 having as its principal aim the reduction of refugee flows from Turkey to Europe; it came into effect on the 4th of April 2016 (Policy Analysis Unit 2016: 1). Unanimously approved by European heads of state, the EU–Turkey Statement was agreed on by Turkish Prime Minister Ahmet Davutoğlu and by Donald Tusk, President of The European Council, in Brussels (European Commission 2019a).

For the deal to function, the following action points have been established: beginning with the 20th of March, all irregular migrants crossing from Turkey into the Greek Islands will be returned on Turkish soil. The return will take place in full conformity with EU and International Law; therefore, any kind of collective expulsion is excluded. With the aid of the UNHCR, Turkey and Greece will work together in order to put into action the safe replacement of Syrian refugees to Turkey; Turkish officials were placed on Greek islands and Greek officials were placed on Turkish territory. The EU will cover the expenses of the return operations of irregular migrants. Migrants who arrive in the Greek islands will be properly registered and applications for asylum will be processed individually by the Greek authorities correspondingly with the Asylum Procedures Directive, in strong collaboration with the UNHCR. Only migrants not applying for asylum and those whose applications have been unfounded or unacceptable in accordance with the said directive will be replaced to Turkey. Moreover, for a Syrian migrant that is returned from the Greek islands, Europe will relocate a Syrian from Turkey. Syrians who have not tried to enter Europe before, will be given priority (European Commission 2016a).

The statement also stipulates that Turkey is responsible for avoiding the opening of new sea or land routes for illegal migration from Turkey to the EU, by collaborating with the neighbouring countries and the EU. A Voluntary Humanitarian Admission

Scheme, to which the EU Member countries will contribute voluntarily, once the irregular migration has ceased or at least has diminished considerably, will be activated (European Commission 2016a).

a) Incentives Offered to Turkey for its Help

The EU should loosen Visa restrictions for Turkish citizens within the countries which are in the Schengen area by the end of June 2016, if all the benchmarks have been met. Turkey should meet 72 benchmarks, regarding areas such as "document security", the management of migration, public order and security, fundamental rights and the respect of the signed deal (Policy Analysis Unit 2016: 2).

In addition, Turkey was offered 3 billion euros as funding for the refugees in order to improve their living conditions in Turkey, and an additional amount of 3 billion euros by 2018 if Turkey spends the money properly. The EU should reopen accession talks for Turkey to join the EU with the opening of Chapter 33 (European Commission 2016a).

The EU and all its member countries will collaborate and work together so as to improve humanitarian conditions inside Syria, especially on the borders with Turkey which will allow people and refugees to live in safer places (European Commission 2016b).

2. Perspectives on the European Union–Turkish Deal

Since the signing of the Statement, there have been numerous attitudes for and against the EU–Turkish Statement. One could argue that the EU–Turkey Deal represented a new way of policy debate concerning migration when it comes to the EU and Turkey, bringing migration governance to the core of current issues (Paçacı Elitok 2019: 2). This section proposes to gather some important statements and opinions from EU leaders, humanitarian advocates, specialists in the field of migration and trustworthy journalistic commentators, as well as the opinion of some refugees regarding the Statement, and their fears with respect to it.

In the first phase, the officials of the EU were quite optimistic regarding the results that the Statement would achieve. According to Angela Merkel, the deal represented a "sustainable, pan-European solution" (The Economist 2016). Despite the optimism, scepticism was also present. Sara Tesorieri, the Oxfam's EU Migration Policy Lead affirmed, „EU and Turkish leaders today made an agreement on the migration crisis that not only fails to respect the spirit of international and EU laws, but may amount to trading human beings for political concessions" (Foster 2016). The EU–Turkey Statement represents the continuation of the Joint Action Plan (2015). It could be stated that the fear for the failure of the EU–Turkey Statement has been tackled previously in the literature reviews. Özmenek Çarmıklı, Kader, Şen, Özgirgin and Öncan highlight the possible flaws of the Joint Action Plan that can be attributed to its successor as well. For instance, referring to the JAP, the action points proposed in the agreement offer two instruments for handling migrant smuggling. The first one involves resettlement of irregular migrants to Turkey, whereas the second one concerns the resettlement mechanism's prioritization for migrants who have not entered or tried to enter the EU illegally . Even though these two instruments seem to be effective in short term, the scheme appears to be problematic regarding the human rights and the refugee law. Therefore, two issues appear: the first one refers to the migrants who have illegally crossed the border to Greece and the second one to the returning and receiving one Syrian refugee. These two problems are susceptible to the violation of refugee rights. According to the deal, Greece has to assess each application individually. The Greek Asylum's System has been criticised several times by the European Court of Human Rights and by the UNHCR. As a result, the refugees' rights could be violated in this process. In addition, there are still concerns regarding the implementation of the prohibition of mass-deportations of foreigners by the ECHR. According to the UN Refugee Convention, Turkey's status as a safe third country does not match the EU regulations given its „geographic limitation." Since relocation programs working out in Turkey give permission to countries to choose which refugees to resettle, the possibility of discrimination emerges, therefore creating problems concerning the selection of refugees. The disregards of international refugee law mentioned above can endanger the future of the Joint Action Plan (Özmenek Çarmıklı et al. 2016: 40–41).

According to „Aljazeera News", the EU–Turkish deal represents a „stinking deal" as it is „built on hypocrisy" (Malik 2015). „With a population of 500 million, the EU has viewed the arrival of a half million migrants as an extraordinary crisis" (Malik 2015). Some might believe that the purpose of the EU is to push the problem of the migrants beyond the boundaries of Europe; European leaders should take into

consideration that Turkey hosted more than 2 million Syrian refugees, having 75 millions of inhabitants (not more than Germany's population). Moreover, Aljazeera argues that the EU has built a „fortress Europe", by leaving the burden to non-EU countries and by militarizing border control (Malik 2015).

According to Angela Merkel, the pact might involve some setbacks and legal challenges. Sophy Ridge, the Senior Political Correspondent at Sky News, affirms: „The aim of this summit was to break the traffickers' business model and to send a message that the unofficial routes to Europe will no longer work. But these are desperate refugees, and if one route closes to them they may make other, more perilous, journeys" (Sky News 2016). As a result, the deal might trigger a serious threat when it comes to the life of the refugees.

The opinion of Jordan's Queen Rania, in her capacity as a humanitarian advocate, is as follows: "The responsibility for this crisis cannot be defined by geography. And I believe that we have to bring humanity and compassion back into the narrative," said Queen Rania. "Because at the end of the day, this is a crisis about human beings – not about borders and barriers. It is about human dignity – not about deals" (Euronews 2016). Nevertheless, Hungary and Austria seemed not to share the same opinion by installing the so-called green border. Kőszeg Ferenc, a Hungarian politician, is raising an alarm concerning Hungary's attitude towards foreigners: „The Fortress Europe idea does exist. Authorities really believe Hungary's only duty is to keep out any migrant, even asylum seekers. They consider all asylum seekers as illegal, irregular migrants. And they don't understand that European practice requires humane treatment of asylum seekers" (Lungescu). For quite a lot of time Hungary was seen as the „black sheep of Europe in asylum matters" (Novak 2015). The Hungarian government has built a fence alongside the border with Serbia in order to halt the Balkan route massive immigration to Europe. The European Parliament states that the number of illegal immigrants has dropped down to over 600.000 in 2018, in comparison to 2.2 million illegal immigrants found in Europe in 2015 (European Parliament News 2017).

When it comes to the opinion of migrants regarding the Statement, a 26-year old Afghan man who arrived after the 20th of March, with the possibility of him being returned states: „I am 26 years old. I don't want to die. If I go home to Kabul they will kill me" (Norwegian Refugee Council 2016). The statement evokes the fact that the rights of refugees are in danger since the responsibility to ensure refugee seeking migrants are safe has to be collective not only divided among neighbouring countries; people have the right to ask for asylum and Jordan, Turkey and Lebanon already host a large number of refugees. According to NRC, refugees are afraid not to be

detained in Turkey and afterwards returned back to their home country. „They give us information we don't need. What will happen with us Afghans? How long do we have to wait?" states a 37-year-old Afghan Male. Refugees do not get clear information, the information is being transferred orally most often; in this case, the information should be handed on according to humanitarian principles such as impartiality and neutrality. Why Syrians have priority on interviews is not explained; this can create feelings of discrimination (Norwegian Refugee Council 2016). Practically, NRC is concerned that the deal discriminates against nationalities whose average international rate of protection at an EU level is under 75%. Therefore, Afghans are not eligible for asylum. "I feel so ashamed. I have nowhere that is mine and no money to pay to leave from here", an immigrant claims. The deal may push people towards choosing more dangerous routes in order to flee from war and persecution. The upper quote is a slight hint to the possibility of being smuggled to a different country (Norwegian Refugee Council 2016).

Concerning the European officials, Merkel believed that „the agreement shows that Europe can solve these kinds of challenges together. We have the chance to achieve a long-term solution", Merkel said. Germany's Chancellor also states that the pact will „hit the business model of smugglers hard." [...] „The agreement will help above all, those most directly affected" (Karnitschnig and Barigazzi 2016). In opposition, John Dalhuisen, Amnesty's Director for Europe and Central Asia affirms that „Turkey is not a safe country for refugees and migrants, and any return process predicated on its being so will be flawed, illegal and immoral – whatever phantom guarantees precede this pre-declared outcome" (Karnitschnig and Barigazzi 2016). As it was stated in the previous part, Europe agreed to take a total of 72.000 refugees or one for every Syrian who is resettled in Turkey.

3. Efficiency and Resettlement under the European Union–Turkish Statement

The outcomes of the deal have been constantly monitored in order to check its efficiency. According to the "First Report on the progress made in the implementation of the EU–Turkey Statement" in the 3 weeks prior to the agreement 26.878 migrants came, while after the deal was agreed, in the upcoming 3 weeks only 5.847 immigrants entered Europe. Smugglers find it very hard to persuade migrants to use Turkey with the intention of arriving to Greece. The European Council outlined that the Statement

with Turkey requires efforts from all the members of the EU. Therefore, Greece was supported in its efforts in terms of materials, logistics and expertise. Juncker urgently appointed the Director-General of the Structural Reform Support Service as the EU coordinator and strengthened the existing Commission Team already on the ground in Greece. The EU Coordinator is to be in charge with the aid provided to the Greek authorities by the Commission, the EU Agencies and other EU member states. He is the one to coordinate the actions of Member states for the implementation of the resettlement scheme from Turkey. A Coordination team responsible for the general strategic direction and relations with key partners; an operation group is in charge of analysing all important data, planning and the deployment of Member state experts. A team is taking care of the resettlements. A committee lead by the Commission with Greece, the European Asylum Support Office (EASO), FRONTEX, Europol, and representatives of the Netherlands (Council Presidency), France, the United Kingdom and Germany, supervise the implementation of the Agreement concerning the resettlements and addressing the encountered obstacles. There were operations by NATO and FRONTEX that intensified the warning and surveillance activities. They also shared operational information with the Greek and Turkish Coast Guards. The main objective was to use NATO activity in the Aegean Sea to increase the detection rate and information exchange related to smugglers regarding the incidents, their routes and their methods (European Commission 2016c: 2–3).

The exchange of liaison officers is also present. Therefore, on the 21st of March, Europol and the Turkish National Police signed a deal to send an officer from Turkey to Europol aimed at fighting against organised crime, smugglers and terrorism. In addition, on the 1st of April, a FRONTEX Liaison officer started work to gather information, do joint analytical work and conduct specific operations. The same is supposed to happen with a Turkish liaison officer at the FRONTEX headquarters. The statement also contains the information of the importance of informing the migrants who are considering travelling irregularly to Greece about the provisions of this statement. Therefore, the Migrants' Information Strategy was established in order to be able to find out more easily the channels asylum seekers and refugees might use to get the information. The 4th of April was the date which marked the resettlement of irregular migrants; 325 persons who entered irregularly after the 20th of March have been resettled from Greece to Turkey. Under the bilateral readmission scheme 1292 migrants have been returned in 2016, most of the return operations taking place in March (European Commission 2016c: 3–4).

The first report outlines the good evolution made in operationalizing the agreement and put in evidence areas in urgent need for action mainly in reinforcing

the daily operation of the return and resettlement process in full conformity with the EU and International Laws. The FRONTEX analysis presents the Q1 2016 as having more than 274.000 asylum applications, representing the highest number of all former first quarters since 2007. In the first quarter, according to FRONTEX statistics there were almost 110.000 illegal crossings to Greece and Bulgaria. Due to the restrictive measures established by authorities on the Western Balkan route, illegal crossings have decreased in number. In January the illegal crossings were the highest, 67000, since the FRAN data collection started in 2007; in March, the number decreased dramatically to 5000 (FRONTEX 2016a: 7–9).

The second quarterly report realized by FRONTEX concerning the illegal crossings states that for the period of April–June 2016 there were 11102 detections, representing only a tenth of the number of illegal border crossings in comparison to the Q1 2016. On the Western Balkan route, Syrians represented only 32% of the populations crossing through the Western Balkan Route (FRONTEX 2016b: 8).

Were the first two quarters of 2016 compared, with regard to the detections of illegal border-crossings at the EU's external border, one can notice that in Q1 there were 153967 illegal crossings through the Eastern Mediterranean route, while in the second quarter there were only 8818. The same happens on the circular route from Albania to Greece 1350 in Q1, decreasing to 1142 in Q2. The Western Balkan Route shows a total of 108.649 crossings in Q1, with only 11.102 crossings in Q2.

In the second report, released on the 15th of June 2016, we can observe a marking decrease as well: for instance, before implementing the agreement, a daily number of approx. 1740 migrants were transpassing the Aegean sea in order to arrive to Greece, while starting with the 1st of May, only 47 arrivals per day were estimated. Moreover, the number of people who died in the Aegean sea has greatly decreased. For example, before signing the deal, in January 2016, 89 lives were lost at sea, in comparison with only 7 lives lost after the 20th of March. Starting with the 20th of April, 462 persons who entered irregularly have been returned. During 2016, the Second Report shows a number of 1546 irregular immigrants being returned to Turkey (European Commission 2016d: 2–4). According to the IOM (International Organization for Migration), up to the 20th of April 154.227 migrants arrived in Greece, out of whom 37% were children and 376 lost their lives on the Turkey–Greece route (BBC News 2016a).

The „Third Report on the Progress made in the implementation of the EU-Turkey Statement" released on the 28th of September 2016 states that in comparison to the Second Report, the number of arrivals from Turkey to the Greek islands was 9.250, which represents an average of 81 arrivals per day. Nevertheless, an increase

in the number of immigrants was to be seen in August to almost double the number concerning the daily arrivals were the last two reports to be compared. Nonetheless, the deal proved to be efficient in the sense that in 2015's summer an average of 2.900 immigrants were transpassing every day in the interval June–September 2015; in addition, before the implementation of the deal around 1.700 immigrants per day were estimated to cross the border to the EU (European Commission 2016e: 2) The BBC reported that average daily arrivals to Greece were 56 in May and they rose to 90 in August, after the Turkish coup d'État, according to Save the Children (BBC News 2016b).

Regarding the resettlement process under the EU–Turkish Statement, one could argue that the process had its ups and downs – there have been positive results, as well as negative aspects related to the length of time it required. The Migration Policy institute outlines a paradox for a European Union that has spent more decades „preaching" its asylum standards to the countries in the neighbourhood. The article states that the EU's self-imposed goal is to diminish the number of arrivals and increase the resettlements to Turkey. Therefore, it is believed that policymakers will have to cut the legal corners dramatically, and therefore some EU laws on problems such as detention and the right to appeal will be infringed. On the contrary, if the deal is handled according with International and European Legal Frameworks, not many persons will be returned (Collett 2016).

Still, the Second report on Resettlement shows progress in comparison to the first report. Since the 20th of April 462 persons who entered after the 20th of March irregularly and did not apply for asylum or did not revoke their asylum applications on their own, have been returned to Turkey. The pace of the returns was quite slow since time was needed to deploy and train asylum experts and to establish working areas for processing migrant applications. The Turkish authorities have provided written assurances that all Syrians will be offered temporary protection when they return to Turkey, enjoying protection from refoulement in compliance with the Law on Foreigners and International Protection. The EU also has the right to monitor all the migrants who have been returned to Turkey (European Commission 2016d, 4–5). People that have been returned are: 240 Pakistani, 42 Afghanis, 10 Iranians, 7 Indians, 5 Bangladeshis, 5 Iraqis, 5 Congolese, 4 Sri Lankans, 2 Syrians, 1 Somalian, 1 Ivorian, 1 Moroccan, 1 Egyptian, 1 Palestinian (European Commission 2016c: 4).

The Third report lists 116 persons returned to Turkey after the 15th of June, including 22 Syrians. Following the EU–Turkey Agreement a total of 578 migrants have been returned. Readmission and return actions have been temporarily

suspended in the period following the Turkish coup d'état, but they continued in September. Voluntary returns were encouraged. Therefore, with EU support, via the International Organization for Migration Assisted Voluntary Returns, 1976 migrants returned to their countries of origin since the 1st of June. 4678 persons have used the programme from Greece 2016 (European Commission 2016e: 5).

The "One for one" Resettlement reports of the European Commission point out the following results: the first report shows that during the first resettlement which took place between the 4th and the 5th of April, 74 Syrian asylum seekers have been resettled to Germany, Finland and the Netherlands. In total, 103 Syrians have been resettled from Turkey to Germany, Finland, the Netherlands and Sweden (European Commission 2016c: 7). The second report points out that until the 8th of June, 408 Syrians have been resettled from Turkey to Sweden, Germany, the Netherlands, Luxembourg, Italy, Lithuania and Portugal. The total number of resettlements to Turkey amounted to 511 (European Commission 2016d: 8). In the third report it is stated that until the 26th of September 1614 refugees have been resettled. 1103 have been resettled since the second report of 15 June 2016 (European Commission 2016e: 8).

4. The Turkish Coup d'État and the Frailty of the European Union–Turkey Statement

On the 15th of July 2016 a military coup was attempted against state institutions, against the government and the president Recep Tayyip Erdoğan in Turkey. According to the Huffington Post, the failure of the coup d'état in Turkey will change the country in ways that represent challenges to Greece as a neighbouring state (Tziampiris 2016). Following the coup, more than 15.000 education ministry staff was fired, the licences of 21.000 teachers have been withdrawn, 1.500 university deans were ordered to resign. Moreover, other fields have also been targeted: 6.000 military personnel have been detained, 3.000 judges have been suspended, 1.500 finance ministry staff fired, 492 persons were fired from the Religious Affairs Directorate, more than 250 staff in Prime Minister Yildirim's office have been removed. The licences of 24 radio and TV channels accused of being related to Mr. Gülen have been revoked (BBC News 2016c). A three-month state of emergency has been announced in Turkey; that means attacking the basic human rights with the possibility of reintroducing the death penalty. Regarding the death penalty the MEPs outline that „the unequivocal

rejection of the death penalty is an essential element of the Union *acquis*" (European Commission 2017f).

After the coup, Turkey was shifting towards an authoritarian regime. On Thursday, the 24th of November, the European Parliament has voted, surprisingly, to freeze talks on Turkey's bid to join the European Union. Therefore, the resolution was as follows: 479 votes to 37 with 107 abstentions (European Parliament News 2016). The EU believed that under President Erdoğan, the human rights are endangered, and democratic standards are not respected. Gianni Pitella, the leader of the socialist group stated: "Our political message towards Turkey is that human rights, civil rights, democracy are non-negotiable if you want to be part of the EU" (News Europe 2016). The MEPs also added that "Turkey is an important partner of the EU" "But in partnerships, the will to cooperate has to be two-sided (...) Turkey is not showing this political will as the government's actions are further diverting Turkey from its European path" (European Parliament News 2016). They condemned the „disproportionate repressive measures" that were taken by the Turkish government in the aftermath of the coup, claiming that these „violate basic rights and freedoms protected by the Turkish Constitution itself" (European Parliament News 2016). President Erdoğan seems to encourage the disruption of Turkey's way to the EU, fact which is sustained also by the referendum which took place on the 16th of April 2017, giving the president additional powers (Mărginean, Ogrean, and Orăștean 2018: 18).

Halting the negotiations meant that no new negotiating chapters can be opened, and no new initiatives can be taken in relation to Turkey's EU Negotiation Framework. This decision has led Erdoğan to threaten the EU by saying he would rather join the security Alliance run by Russia and China and that the EU should „live with the consequences" (De Carbonnel 2016). There is no doubt that the coup represented the end of a period of warmer tone between Turkey and the EU, in comparison with the period preceding the coup.

Some European officials claimed that the end of accession talks would cause a crisis between Brussels and Ankara and raise pressures for reform within Turkey (Coptic Solidarity 2016). It was still to be seen if Turkey would release the nearly three million Syrian refugees that were then within its borders as a result of the European Parliament vote. Erdoğan has formerly threatened that if Europe will not stand next to Turkey, then he should unleash a new wave of immigrants to Europe. "If you go any further, these border gates will be opened. Neither me nor my people will be affected by these empty threats" Erdoğan said at a women's justice Congress in Istanbul (Weise and Foster 2016). According to The Times, the number of refugees

crossing to Greece from Turkey has increased by 84 percent since the failed coup, the data coming from official sources in Athens (Carassava 2016).

Turkey threatened with not going ahead with the deal if the bloc fails to grant the country visa-free travel. During an interview for an Italian TV Channel Rai 24, the Turkish President affirmed: *"If the EU does not grant visa liberalization for Turkish citizens, Ankara will no longer respect the March agreement on migrants"* (RTNews 2016). Nonetheless, the visa-free deal could not be put into practice even though it was planned to be introduced in July 2016. Turkey does not comply with the 72 criteria of the EU; among these, there is also the necessity for Ankara to pay attention to the softening of its rigid anti-terrorism legislation. The Chancellor of Austria, Christian Kern, has warned the bloc not to let itself bullied by Turkey: "We should in no way allow ourselves be intimidated" (RTNews 2016). Jean Claude Juncker stated that "The risk is big. The success so far of the pact is fragile. President Erdoğan has already hinted several times that he wants to scrap it" (Bekdil 2016). It is important to underline that the EU–Turkey Statement is a valuable deal for both parties: Turkey is an important ally in helping the EU control the migration flows to Europe, while Turkey has been offered important incentives for helping the EU.

President Erdoğan has criticized European leaders for not showing solidarity with Turkey during the coup attempt and for raising interest about the rule of law. "Visa liberalization and readmission are very important, currently the process is ongoing. Of course, these will be simultaneous steps. But unfortunately, Europe has not yet delivered on its promises" (Hürriyet Daily News 2016), states the president. Moreover, the president also criticises the EU for being an advocate for democracy, human rights and the rule of law, but still the bloc leaves its Turkish counterpart alone in the fight with the Kurdistan Workers' Party and the Islamic State and at the same time the bloc does not understand that the actions taken against the plotters are directly proportional to the harshness of the events (Kalin 2016).

The mutual conditionality principle has not been entirely respected in this agreement. The EU–Turkish deal started with greater chances to strengthen the EU-Turkish relations and with even greater chances of cooperation between the two. Nonetheless, it was obvious after the Turkish coup d'état that Turkey could not be given the chance to join the bloc especially after Erdoğan's affirmation concerning the possibility of reintroducing the death penalty. Therefore, Turkey might consider that one of the promises of Europe has not been kept. Federica Mogherini, EU's foreign policy chef warned Turkey: "Let me be very clear on one thing," she said; „...

No country can become an EU member state if it introduces [the] death penalty" (Bekdil 2016).

Under state of emergency law, Turkey did not cooperate anymore as it was expected to in the agreement. Turkish liaison officers have been withdrawn from the Greek Islands. The government protocol claims that deportations are not allowed to take place without the presence of the police. Vincent Cochetel affirmed that: "We understand that the Greek police and FRONTEX [the EU's border agency] are re-establishing contact with their Turkish counterparts, but the dates keep changing, so we don't know when cooperation will restart" (Kingsley 2016). In addition, there were important disruptions to the major Turkish institutions: some of the senior officers have been removed from their position; the same situation happened in the directorate for migration management (Kingsley 2016).

Despite all challenges, according to a press release from the 8th of December 2016 positive results were brought by the deal. The total number of returned people under the protocol reached 1187 (European Commission 2016g). European Commission's First Vice President concluded that there was a major decrease in the number of migrants coming to the Greek Islands. Since March an average number of 90 persons per day were signalled, whereas in October 2015, 10.000 refugees arrived per day (European Commission 2016g).

The same results have been reached 3 years after the operational start of the Statement; irregular arrivals stay 97% lower than before the implementation of the deal, together with a substantial decrease in the numbers of lives lost at sea (European Commission 2019a).

Conclusions

In conclusion, the migration crisis has led to the signing of a „fragile" deal: „The EU–Turkish Statement on Refugees". The frailty of the agreement can be grasped from the above-mentioned arguments that reinforce the fact that since the deal is not legally binding, its success will widely depend on the willingness of the two parts to respect their commitments.

Since the visa-free travel has not been granted for Turkish nationals, the Turkish officials have constantly warned that Ankara will not commit to the deal. It was only after the publication of the Third progress report that talks on visa liberalization have reached a deadlock since Turkey is reluctant to revise its anti-terror law. Practically,

unless the Commission provides the Parliament with a written guarantee that all the demands have been met, no talk will be initiated regarding the visa liberalisation. Nevertheless, in the aftermath of the coup, the Turkish government is not likely to ease its anti-terrorism law (Batalla Adam 2016: 5). "If some European countries intensify their terrorist laws and at the same time urge Turkey to soften theirs, this would be understood by our people as a weakening of the fight against terror," Mevlüt Çavuşoğlu stated after referring to the steps taken by France in the fight against the terrorism in the country (Winter 2016).

In addition, an EU factsheet published in January 2017 reveals that the total humanitarian funding that the EU provided Turkey with, reached 588 million Euros since the beginning of the crisis. „Of the 3 billion envisaged, the total amount allocated under the Facility, for both humanitarian and non-humanitarian assistance, has reached 2.2 billion for 2016–2017. In January 2017 this represents almost 75 percent of the total. Out of the total amount allocated, the amount contracted has increased to €1.45 billion and the amount disbursed has reached €748 million" (European Commission 2017). According to a European Commission Press Release from the 19th of July 2019, 5.6 billion out of 6 billion have been allocated under the EU Facility for Refugees in Turkey (European Commission 2019b). From the beginning of the crisis since January 2017, Turkey claims to have spent 11.4 billion euros to provide assistance for the refugees (European Commission 2017). Despite these expenses, 90% of the Syrian refugees live outside the camps, most probably because of the problems of registering with local authorities and because of the language barrier (European Commission 2017). These facts might have pushed Turkish officials towards lacking commitment to the deal since financial reasons represented one of the main incentives offered to Turkey in exchange.

As recommendations, in order for the deal to function correctly the EU should invest more in the asylums that are found in Greece, that is, the EU Asylum Missions could send case workers, interpreters, reception officers in order to help the Greek officials. On the other hand, Turkey could attempt to have a better cooperation and communication with the EU not only on a governmental level, but also when it comes to the overall public, the media and the organizations working in the field.

Turkey and the EU are at a turning point in their relationship, during a period when both are facing economic and security challenges. The two, could use the migration crisis to put forward a fair and realistic agreement on the issue (Hakura 2016: 5). The EU–Turkey Statement is a first step which shows that the EU and Turkey can work together in order to tackle the issue of migration, therefore contributing to make better the life of millions of refugees. The EU has to admit that Turkey is

facing a great challenge in hosting a huge number of refugees and it should support Turkey in this matter. Since the EU–Turkey Statement proved to be successful in the fight against illegal migration, as it was shown in the previous sections of the paper, the two actors should perceive this Statement as an act of revival of their relations and try to come up with new cooperation opportunities when and where possible.

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Legal Aspects of the European Union Language Policy

Abstract

The aim of this article is to analyse the legal aspects of the European Union's language policy. In particular, the article attempts to answer the question whether language policy is a source of language rights for the Union citizens. The first part of the article presents key terms of the language policy of the European Union such as linguistic diversity and multilingualism. Secondly, the article examines the meaning of the notion of language policy, presents its components and puts it into the context of the European Union. Thirdly, legal aspects of the language policy of the European Union are presented. Such aspects include the legal framework for EU language policy and the Union's powers in language matters. On this basis, the author presents a catalogue of language rights resulting from the EU language policy.

Key words: European Union language policy, language planning, linguistic diversity, status planning, language regime, acquisition planning.

JEL Classification: K38, K33, K190, Y8.

Introduction

Language policy is a term which appeared in the 1960s and 1970s of the 20th century and was initially used with reference to the language problems of the newly established states and developing nations. The issue of language policy was growing

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in importance, which was confirmed by the fact that at the beginning of the 21th century two new scientific journals in the field appeared, i.e. *Current Issues in Language Planning* (first published in 2000) and *Language Policy* (first published in 2002). The journals triggered broader interest in a variety of language-related issues, such as the linguistic rights of minority members, English as lingua franca, policies concerning the status and form of languages as well as acquisition policies pertaining to teaching and learning of languages or bilingual education. The growing interest in national language policies encouraged an increasing number of governments, governmental agencies, non-governmental organisations and business enterprises to examine the issue (Ferguson 2006: 3).

The European Union language policy has become a subject of many research papers in recent years. So far, the research papers on the EU language policy have included, *inter alia,* studies challenging or criticising the EU language policy and analysing the concept of linguistic diversity in the EU [Robert Philipson (2003), Richard Creech (2005), Xabier Arzoz (2008), Jacek Łuczak (2010), Anne Lise Kjær and Silvia Adamo (2011), Robert Philipson (2011), Susan Wright (2011), Peter A. Kraus and Rūta Kazlauskaitė-Gürbüz (2014), Jaap Baaij (2015)], studies on the EU multilingual law [Bruno de Witte (2004), Agnieszka Doczekalska (2006), Barbara Pozzo and Valentina Jacometti (2006), Mattias Derlén (2009), Theodor Schilling (2010, 2011), Elina Paunio (2013), Magdalena Szpotowicz (2013), Collin D. Robertson (2016)], analyses of educational and cultural aspects of multilingualism [Bruno de Witte (1987, 2008), Hanna Komorowska (2007), Aneta Skorupa-Wulczyńska (2013), Magdalena Szpotowicz (2013), Susan Šarčević (2015)], the impact of the EU language policy on the EU Member States [Bruno de Witte (1991)], the protection of linguistic minorities and language rights [Bruno de Witte (1992, 1993, 2008, 2010, 2011)], Iñigo Urrutia and Iñaki Lasagebaster (2007, 2008), Theodor Schilling (2008), Iryna Ulasiuk (2011)), institutional aspects of the policy, including actions of the EU institutions in the field of languages and their expected results [Michele Gazzola (2006), Anna Ciostek (2015)], building European identity and the impact of the policy on individual and national identity [Bruno de Witte (1989), Roman Szul (2007), Peter A. Kraus (2008)) and possible scenarios of the language policy for the future [Aušra Stepanoviene (2015), Michele Gazzola (2016)]. There are also other research studies on the linguistic situation in Europe [including Lorna Carson (2003), Jan D. ten Thije and Ludger Zeevaert (2007)] which help to gain a wider background to the EU language policy.

Having considered the above, one may have the impression that all has already been studied and said in respect of the EU language policy. This is not true. The EU

language policy is still evolving, and new challenges appear. Hence, new studies in the field are needed, all the more so as the EU language policy is far from ideal. Although in-depth analyses are carried out into different aspects of the EU language policy, still the need exists to examine its legal aspects. The research is justified by the fact that citizens of the EU Member States increasingly often claim their language rights of varied nature, such as the right to education in their native language in a host member state, the right to use the language understandable to them in front of the court or public authorities of the host state, the right not to be discriminated based on language as a worker or an entrepreneur or the right to understand the labels of the product available on the market of their state, to name the key ones. So far, neither the nature of such rights has been established nor their status specified. What is more, the origins of the rights are not straightforward.

This article aims to present, systematise and analyse the legal aspects of the EU language policy. I propose a hypothesis that the EU language policy constitutes the legal grounds for language rights for the Union citizen. In order to prove this hypothesis, I examine the following issues: the interdependence between the concepts of linguistic diversity, multilingualism and the EU language policy, definitions and components of a language policy, the concept of EU language policy and its components, legal framework of the EU language policy as well as EU powers in the area of languages. The article is divided into seven main parts, according to the research problems listed above.

In order to achieve the desired results, I employ formal-dogmatic and historical methods. In my analysis of the features, components and aims of a language policy I rely to a large extent on the analysis of academic achievements of European linguists, such as Haugen, Lubaś, Cooper, Gajda, Bochmann, Pisarek, Ricento and Grucza. With an aim of studying the EU language policy, I examined primary and secondary sources of law of the organisation and conducted research into the EU language policy on the basis of studies carried out by linguists and lawyers (Arzoz, Carson, Creech, De Witte, Gazzola, Komorowska, Kraus, Łuczak, Philipson, Szul, Szpotowicz and Wright). Notably, the literature and legal regulations in the field are extensive, yet due to the interdisciplinary nature of the problem I focused on the most relevant publications.

1. The Concept of Linguistic Diversity in the European Union

The respect for diversity of cultures, customs, religions, convictions and languages has been the cornerstone of the European integration since its very outset. Yet, the principle of respect for linguistic diversity in the Union has been evolving throughout the years. Initially, diversity of languages was of importance mainly for political reasons. With new accessions, as the Union was becoming more and more diverse, linguistic diversity was turning into a significant social, cultural, economic and political fact of life (Juaristi, Reagan, Tonkin 2008: 47–49). Today, the EU recognises 24[1] official languages and approximately 60 autochthonous regional or minority languages spoken over the geographical area of the European Union (Urrutia and Lasagabaster: 479). Certainly, this is not the entire linguistic picture of the Union. The Euromosaic study identified more than a hundred minority linguistic groups in various EU Member States[2]. What is more, the number of languages is constantly growing due to the mobility of Europeans and notable influx of migrants to the EU. All the languages, including national, regional and minority languages as well as the languages of migrants contribute to the linguistic diversity of the European Union.

The EU's appreciation of linguistic diversity stems from a particular concept of language perceived as a cultural phenomenon and a denominator of identity of a community or society (Krauz 2008: 39–43). In order to show this respect, the Union restrains from interference into national identities and maintains cultural diversity of its Member States (Gajda 2007: 7). The co-existence of many languages in Europe became the European Union's aspiration to be united in diversity (European Commission 2005: 3). The motto of 'united in diversity' became the official symbol of the Union, alongside the European flag and the anthem. Through the motto the Union formally confirms that diverse cultures, traditions and languages in Europe are considered positive assets and key values of Europe. The European Commission states that each of the many European languages is to add its own unique facet to a shared European cultural heritage, where no language is superfluous and no European citizen feels that his or her language is marginalised or disrespected (European Commission 2005: 9).

[1] Status as of 28 November 2018.

[2] The study was initiated by the European Commission in 1992, 2004 and 2008.

2. The Concept of Multilingualism in the European Union

The notion of linguistic diversity within the EU is inseparably connected with the Union's concept of multilingualism. In order to specify the relationship between the two, one should first determine what is meant by multilingualism in the EU. To start with, it must be noted that the plain dictionary definition of multilingualism explains the term as an individual's ability to communicate in several languages (individual multilingualism, plurilingualism) and the co-existence of different languages within a community in one geographical/political area (social multilingualism). Such definition is recognised by scholars in the field, including Carson (Carson 2003), Malinowska (Nikadem-Malinowska 2004) and Zygierewicz (2010), and is commonly accepted by international organisations, such as the United Nations and the Council of Europe. Such understanding of multilingualism is also accepted by the European Union. The European Commission assigns an additional meaning to the term by addressing it as its policy (or strategy) aiming to promote conditions conducive to the full expression of all languages in which teaching and learning foreign languages can successfully develop (Kemp 2009: 11).

With reference to the EU, the meaning of the concept of multilingualism expanded over time. Initially, multilingualism in the EU (EU multilingualism) had a symbolic dimension and was the most prominent symbol of the Union's commitment to cultural and linguistic diversity. With time, the term multilingualism began to be used with regard to a multitude of matters related to language use within the EU, including the public and the private spheres. For this reason, a traditional understanding of multilingualism ceased to suffice to capture the full scope of manifestations of diversity in modern societies, in particular in the EU, where the steady increase in the European mobility entailed many new forms of social multilingualism. Today, EU multilingualism is an interdisciplinary phenomenon which may be studied from various perspectives, i.e. linguistic, educational, social, psychological or legal. Due to its evolving nature, EU multilingualism has received much scholarly attention in recent years (Kemp 2009: 11). The study of the EU law and academic papers as well as the analysis of the doctrine clearly imply that the dictionary definition does not reflect the full meaning of the term multilingualism in the context of the European Union. What is more, the additional meaning assigned to multilingualism by the EC constitutes only some of the matters falling under the

heading of the EU multilingualism. Carson distinguishes three different facets of multilingualism in the EU, i.e. first multilingualism within its official institutions and agencies, second the interface between the EU bodies and the European public, and third multilingualism in the everyday life of Europe's citizens (Carson 2003: 19). Considering the above, it may be stated that multilingualism in the context of the European Union is a multi-layered umbrella term used to describe a multitude of language matters, including, in particular, the Union's language policy, the linguistic regime of the Union's institutions (institutional multilingualism), its multilingual legal system as well as EU actions undertaken to promote multilingualism (EC multilingualism strategy)[3].

3. Linguistic Diversity and Multilingualism in the European Union

The protection of linguistic diversity and promotion of multilingualism constitute two chief official goals of the EU language policy (Van Parijs 2008: 21). Within this policy, the Union attempts to protect and, at the same time, to promote languages. First, the policy aims to maintain linguistic balance by preserving linguistic and cultural diversity of the Union Member States and thereby preventing domination of one or more languages, which would lead to the discrimination of some language. Second, the policy strongly promotes multilingualism and aims to create conditions favourable to foreign language learning. Both goals seem to be complementary by nature, yet they give rise to growing tensions between them. The two principal goals of the EU language policy – protection of linguistic diversity and promotion of multilingualism are in fact contradictory in nature. First of all, not all languages are equally promoted, with some languages being favoured. The Report on the Languages in a Network of European Excellence by LINEE research confirms that the Union promotes languages which are assessed high through the prism of their usefulness in the labour market (European Commission 2011: 13). In fact, the spread of some languages, in particular English, which is unofficially considered to be European *lingua franca*, contributes to a decline in diversity (Van Parijs 2008: 21). The

[3] Empirical studies of the author carried out based on the research of terminology used in the EU law, publications and recent literature in the field (since 2010).

contradictory goals of the Union language policy encourage analysis of its structure and legal framework.

4. Definition of Language Policy

The starting point for my analysis is shaping the definition of the EU language policy which may be deduced from a definition of the notion of language policy, broadly analysed by linguists and sociolinguists[4]. The definitions of language policy introduced so far are not fully consistent and expose different aspects of the term. Nevertheless, a common denominator for all of them is a deliberate and motivated nature of activities, taken by institutions and individuals, which are aimed at shaping and influencing the language situation of a community. A language policy may be kept by both a state and an international organisation. Governments and/or competent authorities authorised to adopt relevant statutes as well as to carry out appropriate information, educational and cultural policies undertake appropriate measures and actions. By definition, a language policy serves two primary objectives: maintaining identity and ensuring effective communication. As language is a fundamental, permanent and intrinsic part of human identity, the language policy is part of an identity policy. Language is also an external creation of a human being and a tool of communication. Hence, language policy is also an inherent part of a communication policy (Grucza 2002: 25). Considering the above, one can definitely state that a language policy is a multi-faceted discipline, which entails three main aspects – legal, cultural as well as educational. The legal aspect of a language policy relates to all relevant regulations imposed by the state or by the organisation in the scope of the language (languages) and its (their) use. The cultural aspect includes the totality of ideas, values, beliefs, attitudes, prejudices, myths, religious strictures, and all the other cultural 'baggage' that speakers contribute to the language(s) from their culture(s). It also includes the linguistic standards of a language (linguistic aspect). The educational aspect of a language policy relates to language acquisition and teaching. The three aspects are interrelated and affect one another. The legal and regulatory aspects of a language policy are regarded as the most important in legal

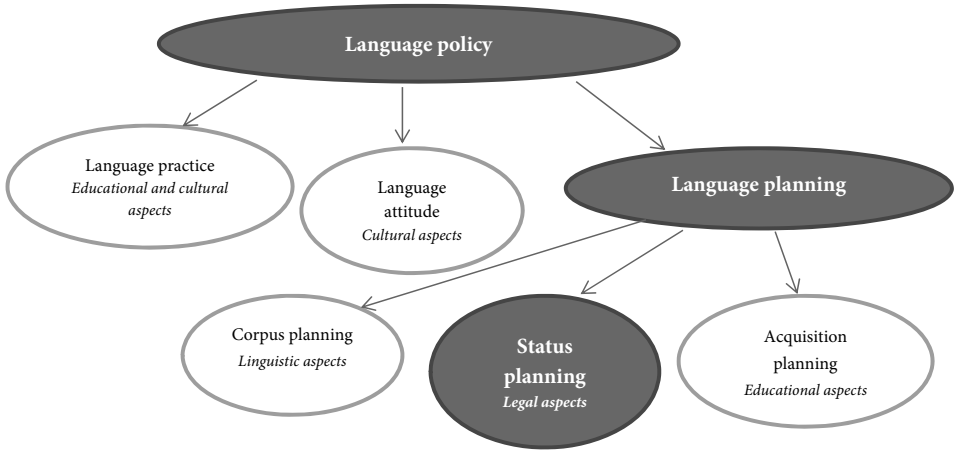
[4] Definitions of language policy were introduced inter alia by Lubaś (1975, 1977), Cooper (1989), Kaplan and Baldauf (1997), Gajda (1999), Bochmann (1999), Pisarek (1999), Ricento (2000) and Pawłowski (2006).

terms as they determine its shape and form the grounds for any implementation activities. Pisarek also notices that legal aspects of a language policy should be brought to the forefront in all decisions concerning privileging a language or a group of languages and limiting other languages or their variants, which is often the case in international organisations (Pisarek 2008: 42).

Language policy comprises language practice and language attitudes and is inextricably connected with language planning, which constitutes its actual phase of implementation. Language planning is carried out by competent authorities in order to sort out language-related issues within a community and to influence the behaviour of the community members with respect to the acquisition, structure or functional allocation of their language codes. Language planning is broken up into three components: status planning, corpus planning and acquisition planning (terms coined and defined by E. Haugen) (Cooper 1989: 45). In principle, status planning within the language policy constitutes the major level of language planning which affects the social and legal position a language will be assigned. As status planning remains within the competence of the state or organisation statutory institutions, the result of the status planning process is publication of all relevant regulations imposed by the state or by the organisation in the scope of the language (languages) and its (their) use. In the course of status planning, the varieties of a language or languages that become official in a state or organisation and serve as a medium of its institutions are established, and the means for interaction between the state and citizens are determined. Acquisition planning is a derivative of the status planning as relevant regulations adopted in the area of language acquisition must be compliant with the superior legislation specifying the status of languages. Although language acquisition is strictly related to education, it exerts significant impact on status and corpus planning, as it is a powerful tool affecting the shape of any language policy (Łuczak 2010: 30). Corpus planning primarily deals with language standardisation processes, including orthographic, lexical and spelling correctness, harmonisation within the language, pronunciation, changes in language structure, vocabulary expansion and style (Kaplan and Baldauf 1997: 20).

The graph below presents the elements of the language policy, relations between the language planning components and aspects they focus on.

Graph 1: Author's own compilation based on the above analysis



5. European Union Language Policy and its Components

The analysis of the meaning of language policy and the components of language planning leads to the formulation of a definition of the EU language policy which may be described as a policy embodied by deliberate activities of the EU competent authorities aimed at shaping the language situation within the organisation. The European Union competent institutions undertake a series of institutional activities to co-exist in many languages. The language policy of the European Union seems to include the required components, with status planning and acquisition planning taking the lead. As noticed by Darquennes and Nelde, corpus planning in the context of the EU language policy plays a minor role. It is of greater importance at the regional rather than supranational level (Darquennes and Nelde 2006: 61–67). The immersion of the EU language policy in protection of linguistic diversity and promotion of multilingualism entirely affects the component of status planning, constituting its significant legal dimension. Status planning encompasses determination of the status of languages of the EU Member States and results in the multilingual regime of the EU and multilingual law. The EU linguistic regime is a language system which regulates the status of languages within the organisation and specifies the languages which can be used in contacts between the institutions and organs of an organisation and its Member States and their citizens, the rules of language use in the internal communication inside and between the organs as well as the rules regarding the

linguistic arrangements of international law instruments concluded by the Union. The European Union law provides for an equal status of all 24 official languages of the EU, with no language being granted a special privileged status (Schilling 2011: 479). Acquisition planning constitutes another significant component of the EU language policy. Within the framework of this component, called the Union's strategy for multilingualism or multilingualism policy, the Union – in fact the European Commission – takes up relevant initiatives to encourage individuals to improve their language skills and master foreign languages and helps the Member States develop educational tools and gather data to monitor progress in language teaching and learning (European Commission 2005).

6. Legal Framework for the European Union Language Policy

The legal framework for the EU language policy has been evolving throughout the years. The policy development may be divided into two phases: the period preceding the Lisbon Treaty and following the Lisbon Treaty. An element linking the two periods is the institutional regime based on Regulation 1/58, which remained virtually unchanged except for the relevant amendments extending the number of official languages upon every accession. The period of Community language policy preceding the Lisbon Treaty was earmarked by three main factors: prohibition of discrimination based on citizenship, Community competence in the field of education and culture as well as ambivalent minority policy. The Lisbon Treaty was a breakthrough in respect of languages and their protection. Somehow, the transformation of the Union into an international organisation contributed to the reinforcement of multilingualism by making it a political necessity which determined proper development of the Union and the achievement of European goals (Athanassiou 2006: 7).

The Lisbon Treaty introduces new legal framework for the EU multilingualism and the basis obliging the Union to respect and promote cultural and linguistic diversity. First of all, the inclusion of the principle of respect for linguistic diversity into the Charter of Fundamental Rights of the European Union (Article 22) changed its status into a fundamental right in the EU. Next, respect for linguistic diversity is also shaped as an aim of the Union. Article 3(3) of the Treaty on European Union (TEU) expressly states that the European Union "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded

and enhanced". Above that, the Lisbon Treaty includes a number of references to the protection of linguistic diversity. The Preamble to the TEU refers to linguistic diversity as an intrinsic element of cultural inheritance by stating that the Union "draws inspiration from the cultural, religious and humanistic inheritance of Europe". Next, respect for linguistic diversity is entrenched in the values on which the Union is founded, as specified in Article 2 TEU. Such values encompass respect for human rights, including the rights of persons belonging to minorities, equality, tolerance, pluralism and non-discrimination. The Treaty on the Functioning of the European Union (TFEU) also includes direct references to linguistic diversity and provides specific provisions on the promotion of linguistic and cultural diversity. Article 165 TFEU stresses that the Union should strive for "developing the European dimension in education, particularly through teaching and dissemination of learning of the languages of the Member States, whilst fully respecting cultural and linguistic diversity". Moreover, Article 207(4)(a) TFEU, which constitutes the basis of the common commercial policy, expresses respect for linguistic diversity in the context of commercial transactions. It obliges the Council to act unanimously in the field of cultural services if they may bear a risk of exerting adverse effect on cultural or linguistic diversity. Respect for linguistic diversity imposes on the Union a passive obligation not to conduct any policy which would prejudice the existing language diversity (Van der Jeught 2015: 90). Apart from the above, the Treaty provides other language-related guarantees including non-discrimination on grounds of nationality (Article 18 TFEU), respect for national identity (Article 4 TEU) and the right to petition the European Union institutions in one's own language (Article 24 TFEU). From a formal regulatory perspective, the recognition of language matters in the primary sources of law implies their importance in view of the principle of equality. However, it must be realised that the legal weight of the language-related provisions differs. Some of them constitute general principles of the Union [Articles 2, 3(3), 4 TEU, Article 18, 24 TFEU], some create concrete grounds for the Union citizen language rights (Regulation 1/58, Article 22 of the Charter, Article 18) and other impose on the Union institutions certain obligations related to the languages [Article 165 TFEU, Article 207(4)(a)].

The above shows that the EU law includes numerous references to language matters. The legal basis for the pure language policy, including the components of status planning and acquisition planning, must be discovered first of all in the regulations on the status of languages. The EU law provides hard-law regulations in this matter. First, Article 55(1) TEU recognises 24 languages (Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German,

Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish). The languages have equal status and the texts of the EU legal instruments are authentic in each treaty language. The principle of authenticity imposes on the EU legislator an obligation to draw up a legal act in all official languages and to treat all language versions as equal and authentic and, consequently, having the same legal effect. The principle of authenticity guarantees uniform interpretation of multilingual law. Obviously, authenticity of all official language versions raises questions of interpretation in the case of linguistic discrepancies as they may constitute the grounds for the member state citizens to challenge a given provision. The major challenge for the UE in this area refers to the expression of the same content in different official languages, thus guaranteeing equal rights to all EU citizens. If, therefore, the expression of the same rights in two languages may be a problem, it is obvious that the difficulty grows proportionately when there are almost thirty languages (Paunio 2016: 13). In this respect, both the Court of Justice of the European Union and national courts of the Member States are obliged to assure proper application of the Union law. Scholars claim that although multilingualism adds a layer of complexity to communication, it does not form an obstacle for assuring legal certainty. In fact, the principle of authenticity of multilingual law creates the conditions for making a uniform and just interpretation of the EU law for all the citizens of the Union (Gajda 2012: 7). The Union institutions have an obligation to treat all EU official language versions as having the same legal force and effect in the course of interpretation (Jedlecka 2019: 144).

Next, Article 342 TFEU includes the primary principle of the EU language regime by delegating the powers to decide about the rules governing the languages to the Council acting unanimously. Although the above Article includes the empowerment of the Council to take decisions in matters concerning the use of official languages and to establish the legal framework of languages in European affairs, it is not a directly effective norm, as it refers to *Regulation* 1/58. Such a solution allows for a flexible approach in a given matter and causes that the formal and factual basis of the language system is actually set out in *Regulation* 1/58, changed at every accession. All official languages are national languages of the EU Member States. Accordingly, currently there are 24 official languages and their joint official status is based on formal equality of languages. This principle reflects the political equality of the Member States and aims to ensure that the EU is transparent for its citizens and to avoid the dominance of one language or some selected languages (Schilling 2008: 481–482).

Language acquisition promoted under multilingualism and educational policy is maintained by the EU in the form of soft law which does not have legally binding force (Grzeszczak 2010: 15). Such law specifies actions of particular institutions aimed at the promotion of multilingualism within the European Union. The catalogue of such acts comprises communications, conclusions, resolutions recommendations, reports and opinions. The legal basis for the EU multilingualism strategy is closely related to the EU education policy. Philipson (2003) even uses the term educational language policy in order to underline the aim of the EU multilingualism, which means ensuring the continued vitality of national languages, rights for minority languages and diversification in foreign language learning and teaching.

It must also be realised that the EU law does not touch upon all the aspects of the EU language policy. One of the key legal dimensions of the EU language policy where the EU is limited by international law includes minority protection. The EU has no explicit jurisdiction in the field of protection of linguistic minorities. In the field of minority languages, the EU speaks of respect and encouragement through the fostering of a commitment to the promotion of culture and language. The EU may only strive to promote regional and minority languages in the EU Member States (Van der Jeught 2015: 94). These are the EU Member States that have a competence to recognise minority languages on their territory, and to ratify or not international agreements in this field. Due to its limited powers in the field of cultural and linguistic matters, the EU cannot guarantee diversity of minority and regional languages (Urrutia and Lasagabaster 2008: 6). The lack of proper regulation in respect of minority languages and language rights of the members of minorities forces the Union to rely upon international law, in particular on the United Nations International Covenant on Civil and Political Rights and the Europe of Council documents, i.e. the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. There are voices in the academic discourse saying that due to the fact that the EU language policy fails to regulate the issue of linguistic minorities, the very existence of the EU language policy should be questioned. They claim that there are no formal and legal grounds for the EU language policy (Komorowska 2007). Today, this is a minority opinion. The majority of scholars agree that the Union as an organisation pursues its own language policy separate from the language policies of its Member States, not being a component of any other policy of the organisation. The fact that the EU language policy is consistent with the policy of the Council of Europe does not question but reinforces the existence of the former (Szpotowicz 2013: 12).

7. Powers of the Union in Respect of Language Matters

The Union is an international organisation acting on the basis of the principle of conferred powers. The European Union does not have an exclusive competence in language-related matters and is not authorised to legislate and adopt legal acts binding upon the Member States in the area of languages. The Member States maintain their language policies and freely determine rules concerning the use of languages in their Constitutions or otherwise, indicate their official language(s) and language policy, including the recognition of regional and minority languages (Van der Jeught 2015: 103). A firm confirmation of the EU Member States' competence to conduct their language policies can be found in the judgement in the *Groener* case (Groener, C-379/87). The Member States are also responsible for making progress in promoting linguistic diversity (at both the regional and local level) and foreign language learning. The Union, in particular the Commission, may take relevant actions falling within its remit to raise awareness in respect of multilingualism and to improve the coherence of actions taken at different levels (European Commission 2005: 3). In practice, the European Union provides general law – mostly in the form of soft law – related to language matters, with specific laws to be provided by the Member States.

Although the competence in language matters is vested in the Member States, it must be exercised by them within the limits of the European Union law, in particular in compliance with the principles of non-discrimination and proportionality. The *Groener* case was a landmark in this respect. In the judgment, the Court put some limits on national competence in the field of languages by combining it with the rights of the Union citizens. The Court specified that the implementation of a language policy must not encroach upon a fundamental freedom such as that of the free movement of workers. The Court added that measures to adopt a policy by a member state "must not be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring discrimination against nationals of other Member States" (Groener, C-379/87, para. 19). The Court stressed that the Member States cannot impose any requirement that the linguistic knowledge must have been acquired within the national territory and that foreign nationals must retake national

language examination as it violates the principle of non-discrimination (Groener, C-379/87, para. 23).

It must also be noted that the general division of competence in language matters between the Member States and the Union institutions does not refer to the status of languages, which is explicitly regulated in hard law and falls within the exclusive competence of the EU. The above demarcation of language jurisdiction between the EU and its Member States leaves space of uncertainty and indicates some conflict areas between the language policies of the EU and its Member States, in particular in the area of language regulation in the internal market, EU freedom of language and national public framework, the aim of social cohesion at the national and regional level, the linguistic organisation of multilingual Member States, language without EU status and restricted language regimes in EU institutions, bodies and agencies (Van der Jeught 2015: 231). All these aspects require extensive research and analysis.

8. The European Union Language Policy and Language Rights

The analysis of the EU language policy and the Union powers in language-related matters leads to a conclusion that the EU language policy is a source of language rights to the Union citizen. It is certain that the rights result from the status of languages (status planning component) and, presumably, from the acquisition planning component. The analysis of language rights of the Union citizen resulting from the strengthening of the principle of respect for linguistic diversity falls outside the scope of this paper.

The status of languages of the EU Member States is specified in hard law – Article 55(1) TEU and Regulation 1/58 – and hence is a source of enforceable language rights. The language rights explicitly enumerated in the Regulation include the right of access to law in a language understandable for the citizen, the right of access to legal procedure in front of the Court of Justice and the right to send documents to the Union institutions and receive an answer in one's own language. The right of access to EU legislation is the primary right for the Union citizen resulting from the Union's legal nature, which imposes direct effect of its primary and secondary law. Every Union citizen should be able to fully understand the content of law that binds them in their own language (European Commission 2008a: 13). Obligation to draft regulations and other documents of general application in official languages set out

in Article 4 of Regulation 1/58 and obligation to publish legislation in the Official Journal of the European Union (OJEU) in all the EU official languages enshrined in Article 5 are a prerequisite to uphold the fundamental principle of legal certainty. In this context, multilingualism is a necessary corollary of the principle of direct effect and the doctrine of the supremacy of the EU law over national laws (Athanassiou 2006: 5–6).

Second, the right of access to legal procedure in front of the Court of Justice provides the Union citizen with the opportunity to enforce their rights using the language comprehensible to them. Article 7 of Regulation 1/58 makes reference to the languages used in the proceedings of the Court of Justice by stating that they are laid down in the Rules of Procedure of the Court of Justice. The Rules read that the applicant is entitled to bring the case to the Court of Justice in any EU official language. The language chosen does not have to be a native language of an applicant [The Rules of Procedure, Article 37(1)]. The language in which an action is brought becomes the exclusive language of the case. If the case is brought by more than one applicant, the applicants must choose a common language or file separate applications. The choice of the language of the case does not mean that this is the only language used in the course of the proceedings. The Court provides translations from and into the languages which are authorised for use during the proceedings. Regardless of the number of languages in which the judgement is published, a judgement is authentic only in the language of the case (The Rules of Procedure, Article 41).

Third, the right to send documents to the Union institutions and receive an answer in one's own language is another language right conferred upon the Union citizen. Article 2 of Regulation 1/58 expressly provides the rights to the citizens of the EU Member States related to language use in communication with the Union institutions. It must be remembered that the Regulation is limited only to the communication with the EU institutions listed in the Lisbon Treaty including the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors, with the linguistic regime of the Court of Justice being governed by separate rules (Article 13 TEU). The language chosen does not have to be a citizen's native language. It might be any other EU official language. It should also be noted that the right to receive an answer in a particular language may be waived. The right of communication in one of the official languages with the EU institutions is also enshrined in Article 24(4) TFEU which states that every citizen is entitled to write to any institution in

one of the languages mentioned in Article 55(1)TEU and have an answer in such a language. Still, communication with a number of EU bodies and agencies may not take place in all EU official languages as they fall out of the scope of the Treaty and Regulation 1/58. Language arrangements concerning communication languages are often governed by internal regimes The EU agencies and bodies including the European Union Intellectual Property Office, the European Investment Bank, the European Union's Judicial Cooperation Unit (Eurojust), Europol are regulated by their internal procedures (Van der Jeught 2015: 150).

It must also be noticed that the status of official languages in the EU comprises other rights related to language use, including the right of politicians (e.g. members of the European Parliament, representatives of Member States in the Council etc.) to use any official languages in public speeches, the right of EU citizens to obtain information about the Union in any of 24 official languages. The EU portal www.europa.eu, containing most significant information about the EU is also maintained in official languages. The status of official languages also implies that not only legislation, but most important EU documents are published in all official languages. However, no clear and transparent rules exist which specify what type of documents are subject to obligatory translation (in whole or in part) and into what language (Szul 2007: 68). Such state of affairs affects citizens' equal accessibility to the information about the Union and as a result their rights.

As to the acquisition planning component, from the legal standpoint, the Union has no competence to impose any obligations or confer any language rights in terms of language acquisition. The facts are that this area constitutes a significant part of the entire EU language policy as it includes a wide range of activities aiming to promote multilingualism and language learning, in particular by promoting plurilingualism, submitting proposals, developing strategies and creating stimuli for the Member States to prepare national action plans (Łuczak 2010: 118). This component is implemented though the European Commission's multilingualism strategy. What is offered by the Union within its remit is granting language privileges to the Union citizens by undertaking relevant initiatives and running campaigns encouraging foreign language learning. Such actions include *Erasmus, Erasmus +, Lingua, Socrates, Youth in Action*. The Member States decide if they ought to follow

the Union's recommendations and they do so based on the subsidiarity principle[5]. Yet, not specific language rights could be inferred in this area to individual citizens of the EU Member States.

Conclusions

The EU is characterised by linguistic diversity entrenched in the Union law as a founding principle and a fundamental right. Taking the above into account, it may be stated that the Union tries to unite its Member States by respecting and protecting their languages and promoting their cultures.

The principle of respect for linguistic diversity puts the Union in front of a difficult task to unite Europeans of diverse languages and cultures. The Union's growing linguistic diversity creates challenges for the Union both at the legal and linguistic level as well as with regard to day-to-day operation of the Union's institutions.

Multilingualism is an umbrella term, used to describe the multiplicity of languages in all aspects of the EU operation.

The EU language policy lacks a full and comprehensive framework for the realization of its objectives. In fact, the policy attempts to maintain balance between protection of linguistic diversity and promotion of multilingualism and thus falls into inner contradictions. The measures taken by the EU institutions to promote and protect languages contradict the Union's declarations on the protection of all languages.

The EU law mostly protects national languages of the Member States as they have the status of the EU official languages. The EU law grants hardly any rights to the users of non-official languages. Therefore, it could be concluded that the scope of the EU concept of linguistic diversity is practically limited to the Union official languages, whose users may enjoy certain language rights.

[5] Principle of subsidiarity is enshrined in Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality and it constitutes one of the fundamental principles of the EU. This principle defines the division of competences and tasks between the EU institutions and the administrations of the Member States. It states that EU institutions can intervene or take specific actions only if they are more effective and effective than actions carried out by individual Member States.

The Union's approach favours official language users and grants significance to official languages while making regional and minority languages less appealing. This may ultimately contribute to reducing linguistic diversity, which is against the Union's objectives.

Based on the official status of languages the Union grants specific rights to the official language holders. Such rights arise out of the Union's linguistic regime and include the right of access the EU legislation, the right to address the Union institutions and the right of access to legal proceedings in front of the Court of Justice of the European Union.

The EC multilingualism strategy to encourage EU citizens to learn foreign languages does not grant or protect any language rights. In this area, the Union only grants some privileges to the Union citizens who may take advantage of language learning initiatives and actions promoted by the EU institutions.

Although the change to the shape of the EU language policy is difficult due to the division of powers between the Union and the Member States in the area of languages, growing multilingualism generates increasing language-related problems which need to be dealt with. In this context, the Union should establish a clear set of language rights of the Union citizen based on the existing language arrangements and the case law of the Court of Justice of the European Union

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Wpływ Rady Europy na przekształcenia w obszarze ochrony praw człowieka w Chorwacji

Abstrakt

Celem niniejszego artykułu jest zbadanie na przykładzie Chorwacji w jaki sposób organizacje międzynarodowe oddziałują na proces kształtowania się ochrony praw człowieka – w tym przypadku Rada Europy. Chodzi więc nie tylko o wskazanie mechanizmów oddziaływania, np. w trakcie procedury monitoringowej, lecz także o analizę i ocenę wdrażania demokratycznych standardów międzynarodowych do praktyki ustrojowej.

Słowa kluczowe: Rada Europy, przekształcenia ustrojowe, Chorwacja.
Klasyfikacja JEL: F5, K3.

The impact of the Council of Europe on the transformations in the area of human rights protection in Croatia

Abstract

The purpose of this article is to examine on the example of Croatia how international organizations – in this case the Council of Europe – act in the process of shaping human rights protection. Therefore, it is not only about identifying mechanisms of influence, e.g. during the monitoring procedure, but also about the analysis and assessment of the implementation of democratic international standards to the systemic practice.

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Key words: Council of Europe, political transformations, Croatia.

JEL Classification: F5, K3.

Wprowadzenie

Chorwacja, przystępując do Rady Europy 6 listopada 1996 r., zobowiązała się do wprowadzenia zmian w swoim ustawodawstwie tak, aby pozostawało ono w zgodzie z normami europejskimi (Baèiae 2006: 88). Wraz z przystąpieniem do Rady Europy Republika Chorwacji została objęta monitoringiem przez Zgromadzenie Parlamentarne RE, podobnie jak np. Rosja, Ukraina czy Mołdawia. Instrumentem Rady Europy, który miał rzeczywisty wpływ na kontrolę wykonywania zobowiązań przez Chorwację, stanowiły raporty Zgromadzenia Parlamentarnego RE.

Warto zaznaczyć, że Chorwacja realizując wymogi członkostwa w Radzie Europy odsuwała się od grona państw niestabilnych, zagrożonych „bałkanizacją" (Żornaczuk 2011: 39–56), a przybliżała do grupy państw o ugruntowanych wartościach demokratycznych i przewidywalnych zasadach funkcjonowania (Podgórzańska 2013: 207). Chociaż proces ten był uwarunkowany wewnętrznie, to istotny wpływ na jego przebieg miała także społeczność międzynarodowa, a zwłaszcza działające w jej imieniu organizacje międzynarodowe (Dokic 1992: 85). Ich oddziaływanie zapoczątkowało proces internacjonalizacji standardów demokratycznych i prawnoczłowieczych oraz implementację ich w wewnętrznych systemach ustrojowych państw (Jaskiernia 2013: 157).

Przebieg procedury akcesyjnej

Na szczególną uwagę zasługuje procedura akcesyjna Chorwacji, w ramach której przygotowywała się ona do realizacji standardów umożliwiających jej członkostwo w Radzie Europy (Smith 2001: 42).

Związki między Chorwacją i Radą Europy sięgają grudnia 1991 r., gdy poproszono o nadanie Chorwacji statusu „specjalnego gościa". Decyzję o jego przyznaniu podjęło Prezydium Zgromadzenia w dniu 4 maja 1992 r.[1] Zgodnie z wymogami Chorwacja,

[1] Zob. Croatia's Request for Membership of the Council of Europe, Doc. 7510, 29 March 1996.

w osobie ministra spraw zagranicznych Zdenka Škrablo, złożyła formalny wniosek o członkostwo w Radzie Europy w dniu 11 września 1992 roku (Gelles 2014: 222)[2]. Wniosek ten został następnie zaopiniowany przez Zgromadzenie Parlamentarne RE w dniu 24 kwietnia 1996 r. uchwałą nr 195[3]. W oparciu o zobowiązania przyjęte przez Chorwację, podpisane przez prezydenta i przewodniczącego parlamentu, a także w nawiązaniu do wielu oczekiwań sformułowanych przez Zgromadzenie, uchwała ta stanowiła, że Republika Chorwacka będzie zaproszona do członkostwa w Radzie Europy.

Z podjętej analizy wynika, że realizacja przez Chorwację zobowiązań już na etapie procedury akcesyjnej napotkała na pewne trudności[4]. Wyrazem tego była uchwała Zgromadzenia przyjęta 29 maja 1996 r.[5], w której wyraziło ono swoje niezadowolenie z faktu, że władze Republiki Chorwackiej postępują niezgodnie z przyjętymi zobowiązaniami. Uwagi dotyczyły głownie stosowania represji wobec dziennikarzy, a także rozwiązania Rady Miejskiej w Zagrzebiu. Zgromadzenie wyraziło wątpliwości czy władze Chorwacji działają w dobrej wierze. Przedmiotem zaniepokojenia była również kwestia współpracy Republiki Chorwackiej z Międzynarodowym Trybunałem dla Byłej Jugosławii (Gaynor 2012: 16–17).

W swojej uchwale Zgromadzenie dostrzegło jednak, że decyzja Sądu Konstytucyjnego Chorwacji, anulująca decyzję rządu o rozwiązaniu Rady Miejskiej Zagrzebia, może stanowić pozytywny sygnał w kwestii funkcjonowania rządów prawa w Chorwacji (Jaskiernia 2013: 18).

Dostrzegło również stanowisko Komitetu Ministrów Rady Europy z 15 maja 1996 r., w którym wskazywał on, że zanim podejmie decyzję w sprawie członkostwa Chorwacji, przeprowadzi badanie, jak realizuje ona przyjęte na tym etapie zobowiązania (Ibidem). Był to polityczny sygnał, aby Chorwacji nie przyjmować pochopnie.

Zgromadzenie zażądało także, by władze Chorwacji ściśle wypełniły zobowiązania, określone w opinii 195 (1996), a jej parlament wdrożył je w życie.

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[2] Parliamentary Assembly of the Council of Europe Opinion: The Apllication by Croatia for Membership of the Council of Europe, Doc. 7534, 23 April 1996.

[3] Zob. Parliamentary Assembly of the Council of Europe, Opinion 195, 24 April 1996.

[4] Zob. Parliamentary Assembly of the Council of Europe Official Report of Debates, 1999 Ordinary Session (Second part), 26–30 April 1999, Vol. II, Strasbourg 1999, s. 490.

[5] Zob. Parliamentary Assembly of the Council of Europe, Resolution 1089 (1996), *Implementation by Croatia of its Commitments in the Framework of the Procedure of Accession to the Council of Europe,* Doc. 7569, 29 May 1996.

Stanowiło to warunek konieczny by akcesja Republiki Chorwackiej do Rady Europy stała się możliwa.

Chorwacki udział w wojnie w Bośni i Hercegowinie spowodował jednak opóźnienia w procesie akcesyjnym. Zgłoszono kilka wniosków z propozycją cofnięcia statutu „gościa specjalnego". Ówczesny marszałek parlamentu Chorwacji, Stjepan Mesic, przyznał w swoim piśmie z dnia 15 listopada 1993 r., że „Chorwacki Sabor jest świadomy faktu, że Chorwacja powinna być w pewnym stopniu pociągnięta do odpowiedzialności za czyny Chorwatów w Bośni i Hercegowinie". Dopiero po zakończeniu walk między Chorwatami i Muzułmanami w Bośni i Hercegowinie oraz w wyniku zawarcia w maju 1994 r. umów w Waszyngtonie prezydium Zgromadzenia Parlamentarnego RE postanowiło kontynuować procedurę akcesyjną (Ibidem).

W 1995 r. chorwackie władze państwowe podjęły decyzję rozpoczęcia działań zbrojnych, które miały zapewnić pełną kontrolę nad całym terytorium republiki (Magaš, Žanić 2001: 171). W maju tego roku wojska chorwackie przeprowadziły operację „Błysk", w wyniku której przejęły z rąk Serbów tereny zachodniej Slawonii. Kolejna ofensywa armii chorwackiej, przeprowadzona w sierpniu 1995 r. operacja „Burza" (Škare-Ožbolt, Vrkić 1998: 28–29) doprowadziła do masowego exodusu wystraszonej ludności serbskiej (Kuczyński 1999: 37), który nastąpił pomimo wezwań i gwarancji władz chorwackich. Prezydent Franjo Tuđman w orędziu do narodu podkreślał, że chorwaccy obywatele narodowości serbskiej „którzy nie uczestniczyli aktywnie w buncie" mogą pozostać w swoim miejscu zamieszkania bez strachu o swoje życie i majątek. Podobne wystąpienia mieli w tym czasie również inni wysocy rangą politycy chorwaccy (Barić 2004: 441–461).

W listopadzie 1995 r. w Dayton[6] nastąpił przełom w rozmowach pokojowych. Postanowiono, że nie dojdzie do wojny o wschodnią Slawonię. Serbscy autonomiści oraz przedstawiciele rządu Chorwacji podpisali kompromisowy projekt zasadniczego porozumienia w sprawie pokojowej reintegracji tego terytorium z Republiką Chorwacką (Chollet 2007: 345–346). Strony zgodziły się na dwunastomiesięczny okres przejściowy (z możliwością przedłużenia o kolejny rok, jeśli jedna ze stron tego zażąda), po którym Zgrzeb miał przejąć całkowitą suwerenną władzę nad wschodnią Slawonią, stanowiącą ostatnią część byłej Krajiny (Redulović 1996), gdzie Serbowie ogłosili w 1991 r. secesję (Hoolbrooke 1998).

[6] Układ w Dayton – układ pokojowy wynegocjowany w listopadzie 1995 r. w miejscowości Dayton (Ohio, USA), kończący wojnę w Bośni. Rokowania toczyły się od 1 do 21 listopada w bazie amerykańskich sił powietrznych Wright-Patterson.

W dniu 14 grudnia 1995 r. w Paryżu podpisano porozumienie pokojowe uzgodnione w listopadzie. Zakończyło ono trwającą trzy i pół roku wojnę w Bośni. W rozmowach brali udział prezydenci Serbii – Slobodan Milosevic, Chorwacji – Franjo Tuđman i Bośni – Alija Izetbegovic, a także liczni obserwatorzy i reprezentanci społeczności międzynarodowej. Na konferencji ustalono warunki pokoju, a także rozmawiano na temat przyszłości Bośni i Hercegowiny. Stworzono wspólny wieloletni rząd, ustalono system polityczny państwa oraz zapowiedziano wolne wybory, przy wsparciu Kongresu Władz Lokalnych i Regionalnych Rady Europy. Bośnię i Hercegowinę podzielono na Federację Muzułmańsko-Chorwacką i Republikę Serbską, przy czym zachowano jej międzynarodowe granice. Potwierdzono również, że zawieszenie broni, które rozpoczęło się 5 października 1995 r. będzie trwało nadal (The General Framework Agreement… 1995).

Wszystkie przypadki łamania praw człowieka na terenie Bośni i Hercegowiny zbadać miała utworzona w tym celu Komisja ds. Praw Człowieka. Uchodźcom i osobom przesiedlonym zapewniono prawo do bezpiecznego powrotu do swoich domów, a także do odzyskania utraconych własności lub uzyskania odszkodowania (Ibidem).

Porozumienie z Dayton miało charakter umowy międzynarodowej. Oprócz stron bośniackiego konfliktu oraz przywódców Chorwacji i Jugosławii uczestniczyli w nim członkowie Grupy Kontaktowej (USA, Rosja, Wielka Brytania, Francja, RFN i Włochy) oraz Specjalny Negocjator Unii Europejskiej. Składało się ono z 11 rozbudowanych artykułów oraz takiej samej liczby aneksów, zawierających szczegółowe informacje i regulacje. Poszczególne aneksy obejmowały najważniejsze kwestie mające przyczynić się do ustabilizowania sytuacji w państwie. Do kluczowych bez wątpienia można zaliczyć Aneks nr IV (Konstytucję) oraz Aneks nr X (Cywilną Implementację). Pierwszy z wyżej wymienionych zawierał tekst ustawy zasadniczej, drugi natomiast powoływał do życia instytucję Wysokiego Przedstawiciela Wspólnoty Międzynarodowej (*The High Representative of International Community,* OHR), który miał nadzorować wprowadzania porozumienia w życie (Jagiełło, Tondera 2013: 15–23).

Przekształcenia w systemie praw i wolności obywatelskich dokonane w trakcie procedury monitoringowej

Członkostwo Chorwacji w Radzie Europy zwiększyło niewątpliwie jej znaczenie na arenie międzynarodowej, jednak aby do niego doszło musiała ona spełnić dwa podstawowe warunki. Spełnienie warunku geograficznej przynależności państwa do kontynentu europejskiego przez Chorwację było proste. Trudniejsze było spełnienie warunku drugiego, politycznego, czyli akceptacji wartości demokratycznych leżących u podstaw Rady Europy oraz podjęcia wysiłków na rzecz zwiększenia solidarności wewnątrz organizacji umożliwiających „zamknięcie" jej przed państwami, które tych ideałów nie podzielają (Benoît-Rohmer, Klebes 2006: 36).

Z powyższego punktu widzenia Rada Europy stanowi organizację prekursorską, ustanawiającą wartości, służącą nie tylko państwom, ale również ich obywatelom (EKPCz). Dla Chorwacji istotne znaczenie miał fakt, że Rada Europy posiada rozbudowany i bezprecedensowo wymagający system norm i standardów ochrony praw człowieka, na który składa się około dwustu konwencji i innych instrumentów prawa międzynarodowego, których podstawą jest Europejska Konwencja Praw Człowieka. Zaś uzupełnieniem jest orzecznictwo Europejskiego Trybunału Praw Człowieka wraz z rekomendacjami Komitetu Ministrów (Świtalski 2010: 25).

Chorwacja ratyfikowała Konwencję Ramową o Ochronie Mniejszości Narodowych w dniu 11 października 1997 r., a Europejską Kartę Języków Regionalnych lub Mniejszościowych w dniu 5 listopada 1997 r. zgodnie ze zobowiązaniami. Dodatkowo, po przystąpieniu do Rady Europy, zobowiązała się do kontynuowania polityki wobec mniejszości na zasadach określonych w zaleceniu nr 1201 (1993 r.) oraz wprowadzenia tych zasad do systemu prawnego i administracyjnego oraz praktyki państwa w cel implementacji zaleceń wynikających z opinii Komisji Weneckiej w sprawie ustawy konstytucyjnej o ochronie wolności i praw człowieka, praw wspólnot i mniejszości narodowych i etnicznych oraz mechanizmów ochrony praw człowieka (Domini 1999: 57).

W tym kontekście Komisja Wenecka zaleciła, aby przepisy dotyczące ustawy konstytucyjnej z 1991 r. na temat praw człowieka i praw mniejszości – której przyjęcie było jednym z warunków międzynarodowego uznania niepodległości Chorwacji – zostały zmienione tak szybko, jak to możliwe w celu zagwarantowania praw

mniejszości w zakresie autonomii lokalnej, zgodnie z Europejską Kartą Samorządu Lokalnego oraz zaleceniem nr 1201 (1993).

W momencie przystąpienia do Rady Europy, Republika Chorwacka zobowiązała się również w pełni i skutecznie współpracować w ramach realizacji porozumień z Dayton na rzecz pokoju w Bośni i Hercegowinie, jak również ściśle przestrzegać swoich zobowiązań wynikających z Umowy dotyczącej współpracy w regionie wschodniej Slawonii, Baranji i zachodniej Sirmium (Umowa Erdut) a także w pełni współpracować z tymczasową administracją Organizacji Narodowców Zjednoczonych w tym regionie (Biondich 2005: 446).

Na mocy porozumienia z Dayton, Chorwacja zobowiązała się do bezwarunkowego uznania prawa wszystkich osób przesiedlonych i uchodźców, aby bez przeszkód mogli powrócić do swoich domów. Przystępując do Rady Europy, Republika Chorwacji potwierdziła i rozszerzyła te zobowiązania o podjęcie wszelkich niezbędnych środków, w tym ochrony policyjnej, w celu zagwarantowania prawa do bezpieczeństwa osobistego ludności serbskiej w Chorwacji, a w szczególności na byłych obszarach chronionych przez ONZ. Zobowiązania te obejmowały również ułatwienie powrotu uchodźców i zagwarantowanie im korzystania z pełni swoich praw, w tym do odzyskania własność lub do uzyskania odszkodowania za nią (Ibidem: 447).

Wraz z członkostwem w Radzie Europy, Chorwacja zobowiązała się też do rozwiązywania sporów międzynarodowych i wewnętrznych środkami pokojowymi, a także do rozwiązywania międzynarodowych sporów granicznych zgodnie z zasadami prawa międzynarodowego. Podjęła również zobowiązania na rzecz walki z konsekwencjami wojny (Fearon 1995: 2). W tym celu zobowiązała się do przedstawienia wyraźnych instrukcji urzędnikom Ministerstwa Spraw Wewnętrznych o elastycznym stosowaniu ustawy o obywatelstwie z 1991 r. w odniesieniu do długoterminowych mieszkańców Chorwacji, którzy stali się bezpaństwowcami. Pomoc w odzyskaniu obywatelstwa poprzez naturalizację miała stanowić jeden z głównych celów państwa chorwackiego w tym zakresie. Dodatkowo Republika Chorwacka zobowiązała się zatwierdzić dokumenty wydane na byłych obszarach chronionych przez ONZ, w tym te uprawniające do emerytur i innych praw socjalnych. Dodatkowo postanowiła zorganizować kampanię informacyjną na ten temat (Ibidem).

Po uzyskania członkostwa przez Chorwację w Radzie Europy istotnego znaczenia nabrał również proces pojednania między Serbami i Chorwatami. W tym zakresie Republika Chorwacka zobowiązała się przyśpieszyć pojednanie społeczności etnicznych, aby przyczynić się do powstrzymania emigracji obywateli serbskiego

pochodzenia etnicznego z regionu Dunaju[7]. Zgromadzenie stwierdziło, że władze chorwackie powinny podjąć natychmiastowe działania w celu uaktywnienia zarówno na poziomie krajowym jak i lokalnym realizacji „Programu dla ustanowienia zaufania, przyśpieszonego zwrotu i normalizacji warunków życia na obszarach dotkniętych wojną" (październik 1997). Zgromadzenie wyraziło jednocześnie rozczarowanie skalą wdrożenia tego programu (Jagiełło-Szostak 2014: 191–193).

Z kolei przedstawicielom społeczności serbskiej zalecono natomiast, aby podjęli konkretne działania w celu promowania tolerancji i pojednania poprzez m.in. bardziej aktywny udział w pracach Komitetu Narodowego w budowaniu zaufania (Ibidem: 194).

Zadanie społeczności międzynarodowej polegać miało natomiast na pomocy na rzecz odbudowy. Dlatego w tym kontekście Zgromadzenie z zadowoleniem przyjęło zatwierdzenie przez Radę Funduszu Rozwoju Społecznego dwóch pożyczek na łączną kwotę 33,7 mln euro na finansowanie projektów we wschodniej Slawonii i dalej zachęcało do podobnych inicjatyw na podstawie projektów przedstawionych przez rząd chorwacki (Ibidem: 195).

Z chwilą przystąpienia do Rady Europy, Republika Chorwacka podjęła również zobowiązanie współpracy i aktywnej pomocy Prokuratorowi Międzynarodowego Trybunału Karnego dla Byłej Jugosławii (ICTY) w niezwłocznym doprowadzeniu przed sąd osób oskarżonych o zbrodnie wojenne, zbrodnie przeciwko ludzkości i ludobójstwa (Murphy 2006: 147). W ocenach międzynarodowych stosunek do Trybunału i jego działalności oceniany był jako „moment prawdy", ukazujący gotowość rozliczenia się Chorwacji w obszarze odpowiedzialności za zbrodnie wojenne. Nie było to łatwe, ponieważ środowiska nacjonalistyczne sprzeciwiały się współpracy z Trybunałem sugerując, że prowadzone przez niego postepowania naruszają godność i podważają legitymizację Wojny Domowej 1991–1995. Rząd chorwacki znalazł się więc w obliczu dylematu: czy posłuchać środowisk nacjonalistycznych, czy podjąć współpracę stosownie do oczekiwań społeczności międzynarodowej. Efekty tego nie były spójne. Każdy bowiem wyrok Trybunału podnoszony był do rangi wydarzenia, które zagraża stabilności i bezpieczeństwu państwa (Boduszyński 2003: 34).

Warto również podkreślić, że od samego początku istnienia Międzynarodowego Trybunału Karnego dla Byłej Jugosławii starano się zmienić wizerunek międzynarodowego prawa humanitarnego oraz dać możliwość opowiedzenia ofiarom

[7] Zob. Parliamentary Assembly the Council of Europe, Political Affairs Committee, *Reconciliation and Political Dialogue Between the Countries of the Former Yugoslavia,* AS/POL (2010) 30, 6 September 2010, s. 2–3.

o tragediach, których doświadczyły. Trybunał chciał w ten sposób pokazać, że w żaden sposób pozycja społeczna czy polityczna zajmowana przez pojedyncze osoby nie może być dla nich zabezpieczeniem umożliwiającym bezprawne zachowania (Puszczewicz 2013: 122).

Wsparcie ze strony Chorwacji miało mieć tym większe znaczenie, bowiem w początkowym okresie swojego działania Międzynarodowy Trybunał Karny dla byłej Jugosławii napotkał wiele przeszkód. Determinacja, aby ująć zbrodniarzy wojennych, nie zawsze była oczywista w państwach do tego zobowiązanych, szczególnie w pierwszych latach po zakończeniu wojny. Skomplikowane stosunki pomiędzy siłami międzynarodowymi a władzami lokalnymi często doprowadzały do sytuacji konfliktowych (Crampton 2002: 246)[9]. Niełatwo było również o poparcie przywódców społeczności międzynarodowej realizujących na Bałkanach swoje własne interesy (Ibidem: 247).

Przebieg procedury akcesyjnej, w tym definiowanie konkretnych zobowiązań, a także – w następstwie ich przyjęcia – monitoring ich wdrażania, prowadzony przez Zgromadzenie Parlamentarne i Komitet Ministrów, następował w ścisłej współpracy z OBWE i UE oraz z ich misjami w kraju. Dowodem współpracy były wspólne wystąpienia przedstawicieli tych trzech instytucji wobec najwyższych władz w Zagrzebiu, jak też wspólne programy prowadzone na rzecz promowania powrotu uchodźców i osób wysiedlonych, ochrony mniejszości oraz reformy systemu sprawiedliwości i mediów (Furrer 2005: 21).

Stanowiło to niewątpliwe przykład równoległego monitorowania sposobu przestrzegania przez Chorwację zobowiązań w dziedzinie demokracji i praw człowieka. Powadzony monitoring, np. przez Komisję Europejską, stanowi bowiem powielenie monitoringu prowadzonego przez Zgromadzenie Parlamentarne i Komitet Ministrów Rady Europy.

Od pewnego jednak czasu mówiono na temat ryzyka dualizmu instytucjonalnego, jeśli chodzi o ochronę praw człowieka w Europie. Problem ten poruszany był wielokrotnie przez organy Wspólnot i Rady Europy[10]. Wraz z rozszerzaniem zakresu kompetencji dwóch systemów prawnych – systemu ochrony Rady Europy i systemu wspólnotowego – pojawiło się bowiem realne prawdopodobieństwo duplikacji działań i „nakładania się" na siebie jurysdykcji Europejskiego Trybunału Praw Człowieka i

[9] Zob. Crampton, R.J., 2002 *The Balkans Since the Second World War,* New York*:* Longman: 246.

[10] Por. Uchwała Zgromadzenia Parlamentarnego Rady Europy nr 1108 z 28.01.1997.

Europejskiego Trybunału Sprawiedliwości[11]. W związku z tym wysunięto postulat doprowadzenia do akcesji Wspólnoty do Europejskiej Konwencji Praw Człowieka lub opracowania odrębnego katalogu praw człowieka przez organy WE. Taką możliwość otworzył Traktat z Lizbony.

Chorwacja ratyfikowała Europejską Konwencję Praw Człowieka i jej Protokoły dodatkowe (1, 2, 3, 4, 5, 6, 7, 8 i 11), Europejską Konwencję o zapobieganiu torturom oraz nieludzkiemu lub poniżającemu traktowaniu albo karaniu, Konwencję Ramową o Ochronie Mniejszości Narodowych (11 października 1997 r.), Europejską Kartę Samorządu Terytorialnego oraz Europejską Kartę języków regionalnych lub mniejszościowych (5 listopada 1997 r.) w terminach określonych w opinii nr 195 (1996) (Rodin 1999: 95)[12].

Procedura monitoringowa wykazała, że dla systemu ochrony praw i wolności obywatelskich (praw człowieka) zasadnicze znaczenie miała realizacja przez Republikę Chorwacką zobowiązań w tym zakresie. Podstawowa znaczenie podpisania i ratyfikowania powyższych konwencji Rady Europy zostało podkreślone w Rezolucji 1185 (1999) Zgromadzenia Parlamentarnego RE, które pogratulowało państwu chorwackiemu wypełnienie jednego z kluczowych zobowiązań.

W dniu 11 maja 2000 r. parlament Chorwacji uchwalił dwie ustawy dotyczące mniejszości narodowych: ustawę o edukacji w języku mniejszości narodowych[13] oraz ustawę o używaniu języka mniejszości narodowych jako języka urzędowego. Były one oczekiwane przez mniejszości narodowe (Mikucka-Wójtowicz 2010: 7–16), a także przez społeczność międzynarodową (Horvat 2013: 47–64).

Pomimo trudnego okresu przemian politycznych, gospodarczych i społecznych, Chorwacja poczyniła znaczne postępy w rozwiązywaniu problemów związanych z rasizmem, antysemityzmem, dyskryminacją i nietolerancją (Banjeglav 1997: 23–24). Oprócz ratyfikacji międzynarodowych aktów prawnych podjęła ona poważne wysiłki zmierzające do poprawy ustawodawstwa krajowego i jego realizacji. Organy krajowe wyraziły zobowiązały się do działań zmierzających do umożliwienia powrotu uchodźców i przesiedleńców wszystkich grup etnicznych (Council of Europe 2000: 3).

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[11] Zob. Parliamentary Assembly of the Council of Europe Resolution, *European Union Charter of Fundamental Right, The Risk of Confusion and Duplication of Effort in the Event of Such a Charter Being Integration into Treaties of European Union,* Motion of Resolution presented by Mr Lekberg and others, Strasbourg 23 September 1999, Doc. 8542, 1.

[12] Zob. Parliamentary Assembly of the Council of Europe, Resolution 1185 (1999)…., s. 1.

[13] Law on Education in Languages and Letters of National Minorities. Final Presposition, Zagreb, May 2000, źródło: www.erisee.org/downloads/library_croatia/Legislation/law_on_education.pdf, data dostępu: 26.10.2018.

Raport Europejskiej Komisji Przeciwko Rasizmowi i Nietolerancji (ECRI) wykazał jednak utrzymujące się problemy związane z dyskryminacją etniczną i narodową oraz nietolerancją w wielu kluczowych dziedzinach życia, w szczególności w odniesieniu do Serbów oraz Romów. Mimo dobrej woli ze strony władz krajowych skuteczne środki zaradcze wobec tych problemów nie zostały opracowane. Komisja Monitoringowa z głębokim niepokojem odniosła się do sytuacji na poziomie lokalnym, zwłaszcza w regionach dotkniętych wojną, gdzie odnotowano przypadki złej woli i dyskryminacji ze strony władz. Ponadto, wysiłki ze strony wszystkich zainteresowanych stron na rzecz pojednania i budowania zaufania i osłabienia klimatu napięcia były niewystarczające. Atmosferę pogarszała ogólnie trudna sytuacja gospodarcza i konieczność zrekonstruowania zniszczonej w czasie wojny infrastruktury (Ibidem).

W trakcie procedury monitoringowej Rady Europy Chorwacja wdrożyła wiele instrumentów w dziedzinie zwalczanie rasizmu i nietolerancji. Władze chorwackie rozważały również kwestię przyjęcia artykułu 14 Konwencji o Eliminacji Wszelkich Form Dyskryminacji Rasowej, która dałaby możliwość osobom i grupom wnoszenia petycji przed ECRI. W swoim pierwszym raporcie ECRI wyraziła również nadzieję, że Chorwacja dokona ratyfikacji Europejskiej Karty Społecznej – co potwierdziły władze chorwackie – oraz ratyfikuje Europejską Konwencję o obywatelstwie, Konwencję o statusie prawnym pracowników migrujących, jak i Europejską Konwencję o uczestnictwie cudzoziemców w życiu publicznym na poziomie lokalnym (Ibidem: 6).

W swojej Rezolucji 1185 (1999), Zgromadzenie Parlamentarne RE wyraziło ubolewanie, że „jeśli chodzi o prawa mniejszości nie istnieje żaden postęp w przygotowaniu projektu ustawy o rewizji zawieszonych przepisów prawa konstytucyjnego z 1991 roku w sprawie praw człowieka oraz praw i wolności wspólnot mniejszości narodowych i etnicznych" i wezwało władze chorwackie do przyjęcia wymienionej ustawy zgodnie z zaleceniami Komisji Weneckiej.

W dniu 11 maja 2000 r. chorwacki parlament przyjął ustawę o używaniu języka i alfabetu mniejszości narodowych w Republice Chorwacji[14]. Członkowie mniejszości narodowych oraz społeczność międzynarodowa wyrazili zadowolenie z tego faktu (Janusz 2007: 23).

Zgodnie z art. 12 chorwackiej Konstytucji: „W Republice Chorwacji w użyciu oficjalnym jest język chorwacki i alfabet łaciński. W poszczególnych lokalnych jednostkach obok języka chorwackiego i alfabetu łacińskiego do użycia oficjalnego

[14] "Zakon o uporabi i pisma nacionalnih manijna u Republici Hrvatskoj".

można wprowadzić także inny język oraz alfabet cyrylicki lub inny alfabet zgodnie z warunkami określonymi przez ustawę". Cytowany zapis konstytucyjny zapewnił językowi chorwackiemu status uprzywilejowanego, państwowego języka. W kolejnych paragrafach, konstytucja dawała wszystkim obywatelom – niezależnie od ich języka – te same i równe prawa (§14); gwarantowała członkom mniejszości narodowych swobodę używania własnego języka i autonomię kulturalną (§15); zapewniała, że ewentualne ograniczenie swobód obywatelskich – będące konsekwencją wprowadzenia stanu wojennego – nie będą uprzywilejowywać żadnego obywatela ze względu na jego narodowość lub używany przez niego język (§17); dawała gwarancję, że w sytuacji, gdy oskarżony nie będzie znać języka chorwackiego, zarzuty zostaną przedstawione a procedura dowodowa będzie przeprowadzona w sądzie w języku zrozumiałym przez oskarżonego, zaś w dalszym toku procesu oskarżonemu zostanie też zapewniony tłumacz (§29) (Jaroszewicz 2014: 129).

Przyjęta w 2002 r. ustawa konstytucyjna o prawach mniejszości narodowych[15] w art. 7 ust. 7 gwarantuje im posiadanie reprezentacji w parlamencie Chorwacji, w organach władzy lokalnej oraz innych podmiotach władzy publicznej. W art. 19 zaś wskazano, że członkowie mniejszości narodowych powinni wybierać co najmniej pięciu, ale nie więcej niż ośmiu deputowanych w specjalnych okręgach wyborczych, na zasadach określonych w przepisach ordynacji wyborczej do parlamentu, które w żaden sposób nie mogą przyznanych uprawnień ograniczać. Ponadto, ustawa ta określiła, że mniejszościom narodowym, które stanowią mniej niż 1,5% całej ludności Chorwacji, należy zagwarantować co najmniej jedno, ale nie więcej niż trzy miejsca w parlamencie, natomiast te spośród nich, których członkowie stanowią ponad 1,5% wszystkich mieszkańców Republiki Chorwackiej, powinni otrzymać prawo wybrania co najmniej czterech deputowanych.

W ordynacji wyborczej do parlamentu chorwackiego[16] prawom mniejszości narodowych do posiadania reprezentacji w parlamencie poświęcono osobny tytuł, gdzie doprecyzowano postanowienia ustawy konstytucyjnej. Zgodnie z art. 15 przyznano im prawo do wybierania ośmiu przedstawicieli do parlamentu w specjalnych okręgach wyborczych. Mając na uwadze liczebność poszczególnych grup, kolejny artykuł doprecyzowuje, że członkowie mniejszości serbskiej wybierają

[15] Zob. Ustawa konstytucyjna z dnia 13 grudnia 2002 r. o prawach mniejszości narodowych, *Ustavni zakon o pravima nacionalnih manijna,* Narodnik novinama, No 155/2002.

[16] Zob. Ordynacja wyborcza do parlamentu chorwackiego, *Zakon o izborima zastupnika u Hrvatski Sabor,* „Narodne Novine", Nr 116/99, 109/00. 53/03.

trzech deputowanych, węgierskiej i włoskiej po jednym przedstawicielu, czeskiej oraz słowackiej wspólnie jednego, ponadto jeden deputowany jest wyłaniany łącznie przez mniejszość albańską, czarnogórską, macedońską i słoweńską, podobnie jedną osobę wybierają razem mniejszości: austriacka, bułgarska, niemiecka, polska, romska, rumuńska, rosyjska, turecka, ukraińska, walachijska oraz żydowska. Rozdział mandatów parlamentarnych odbywa się z zastosowaniem systemu większości zwykłej, przy czym w przypadku, gdy dwóch lub więcej kandydatów uzyska taką samą liczbę głosów, głosowanie zostaje powtórzone.

W systemie aksjologicznym Rady Europy zasadniczą uwagę przywiązuje się do kwestii równości płci i niedyskryminacji. „Równość płci" definiowana jest jako wyraz „równej widoczności, wzmocnienia pozycji i udziału obu płci we wszystkich dziedzinach życia publicznego i prywatnego". Ramy antydyskryminacyjne wyznacza niewątpliwie Europejska Konwencja Praw Człowieka. Biorąc pod uwagę znaczenie polityczne poruszonego zagadnienia – tj. pełne uczestnictwo kobiet w centralnej części polityki – Komitet Ministrów Rady Europy przyjął Zalecenie (2003) 3 w sprawie zrównoważonego udziału kobiet i mężczyzn w podejmowaniu decyzji politycznych i publicznych[17], wzywając tym samym państwa członkowskie „do promowania zrównoważonej reprezentacji kobiet i mężczyzn, uznając publicznie, że równy podział władzy decyzyjnej pomiędzy kobietami i mężczyznami z różnych środowisk i grup wiekowych wzmacnia i wzbogaca demokrację". Z kolei Kongres Władz Lokalnych i Regionalnych podkreślił znaczenie wdrażania polityki równości płci na poziomie lokalnym poprzez przyjęcie m.in. Uchwały 176 (2004) w sprawie problematyki płci na poziomie lokalnym i regionalnym: strategia na rzecz równości kobiet i mężczyzn w miastach i regionach[18]. Republika Chorwacji, zgodnie z celem wzmocnienia bezpieczeństwa obywateli oraz planem działania przyjętym podczas trzeciego szczytu państw członkowskich w Warszawie (16–17 maja 2005 r.), dołączyła do Rady na rzecz zwalczania przemocy wobec kobiet w celu przygotowania wspólnej ogólnoeuropejskiej kampanii w latach 2006–2007 i zobowiązała się ratyfikować Konwencję Rady Europy w sprawie działań przeciwko handlowi ludźmi[19]. Poprzez

[17] Zob. Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making.

[18] Zob. Resolution 176(2004) of the Congress of Local and Regional Authorities on gender mainstreaming at local and regional level: a strategy to promote equality between women and men in cities and regions.

[19] Zob. Konwencja Rady Europy w sprawie działań przeciwko handlowi ludźmi, sporządzona w Warszawie dnia 16 maja 2005 r., Dz.U. 2009 nr 20 poz. 107.

udział w 6. europejskiej konferencji ministerialnej w sprawie równouprawnienia kobiet i mężczyzn (Sztokholm, 8–9 czerwca 2006 r.) rząd przyjął rezolucję „Osiągnięcie prawdziwej równości płci: wyzwanie dla praw człowieka i warunek rozwoju gospodarczego" oraz plan działania „osiągnięcie rzeczywistej równości we wszystkich dziedzinach życia społecznego". Chorwacja wyraziła tym samym zgodę na stosowanie strategicznych celów i wspólnych działań w oparciu o normy europejskie w zakresie wzmacniania realizacji polityki równych szans (*Nacionalna politika…*).

Niezwykle istotnym wydarzeniem dla systemu ochrony praw i wolności obywatelskich w Republice Chorwackiej było również objęcie kognicją Europejskiego Trybunału Praw Człowieka. Chorwacja zobowiązała się do terminowego i rzetelnego wykonywania jego orzeczeń. Zaś chorwaccy obywatele zdali sobie sprawę z faktu, że bitwa o prawa człowieka rozgrywa się w znacznej mierze w obszarze egzekucji wyroków sądowych (Marmo 2008: 235–258). Jak podkreślają znawcy prawa międzynarodowego, efektywność orzecznictwa sądów międzynarodowych ma coraz większe znaczenie dla skuteczności prawa międzynarodowego (Galicki 2010: 84). W sferze praw człowieka znaczną rolę odegrała też implementacja tzw. miękkiego prawa, które uzupełniło normy twarde i wytyczyło i stanowiło inspirację powstania nowych standardów. Nie należy pominąć też sfery współpracy Chorwacji z Komisarzem Praw Człowieka Rady Europy.

Podsumowanie

Nie ulega wątpliwości, że członkostwo Republiki Chorwackiej w Radzie Europy, przyczyniło się do zasadniczych przekształceń ustrojowych, zgodnych ze standardami Rady. Podpisanie i ratyfikowanie Europejskiej Konwencji Praw Człowieka miało kluczowe znaczenie, ponieważ wiązało się z objęciem chorwackich obywateli jurysdykcją Europejskiego Trybunału Praw Człowieka. Zasadniczą rolę odegrała tu też Komisja Wenecka, oferując Chorwacji ocenę proponowanych rozwiązań konstytucyjnych a także ustawodawczych z punktu widzenia zgodności ze standardami Rady Europy.

Na przykładzie Republiki Chorwackiej potwierdziła się teza, że Rada Europy może być traktowana jako „przedsionek" do Unii Europejskiej. Co prawda RE ma swoje stałe cele i nie może być wyłącznie traktowana w charakterze „przedszkola", poprzedzającego członkostwo w UE, to jednak nie ulega wątpliwości, że istotne

motywacje związane z uzyskaniem członkostwa i wypełnieniem zobowiązań w stosunku do Rady Europy ściśle wiążą się z docelową strategią uzyskania członkostwa w Unii Europejskiej. Istnieje zresztą spójność aksjologiczna Rady Europy i Unii Europejskiej w zakresie wartości demokratycznych, która powoduje, że realizacja standardów RE ma istotne znaczenie w procesie ustalania, czy realizowane są standardy UE (m.in. Kryteria kopenhaskie).

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Na temat społeczności muzułmańskich w Polsce napisano stosunkowo sporo – zarówno publikacji o charakterze przekrojowym[1], jak i dotyczących konkretnych kategorii społecznych: Tatarów[2], Czeczenów[3], czy Polaków, którzy przeszli na islam[4]. Każda z tych grup doczekała się przynajmniej jednej monografii

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1 Patrz np. K. Kościelniak, *Muzułmanie polscy: religia i kultura,* Wydawnictwo M, Kraków 2016, K. Górak-Sosnowska (ed.), *Muslims in Poland and Eastern Europe: widening the European discourse on islam,* Wyd. University of Warsaw Faculty of Oriental Studies, Warszawa 2011.

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3 Patrz np. E. Januszewska, *Dziecko czeczeńskie w Polsce. Między traumą wojenną a doświadczeniem uchodźctwa,* Wydawnictwo Adam Marszałek, Toruń 2010.

4 Patrz np. M. Ryszewska, *Polskie muzułmanki. W poszukiwaniu tożsamości,* Wydawnictwo Naukowe UMK, Toruń 2018.

w języku polskim. Na tym tle mógł zastanawiać brak analogicznego opracowania poświęconego społeczności arabskiej mieszkającej w Polsce. Tym bardziej, że na tle innych społeczności muzułmańskich jest ona spora, a także ma stosunkowo długą historię obecności na terenie naszego kraju. Wydaje się, że brak ten wynikał z dwóch powodów, które nie występują w przypadku poprzednich kategorii społecznych. Pierwszym jest znajomość języka arabskiego. Nie ma konieczności znajomości języka obcego w badaniach dotyczących Tatarów czy konwertytów na islam – wystarczy solidny warsztat z nauk społecznych i można ruszać w teren. Stara diaspora arabska posługuje się językiem polskim często niemalże bezbłędnie. W przypadku nowej diaspory wypadałoby znać język arabski (albo angielski, albo francuski) i to na tyle, aby przeprowadzić badania. Drugim powodem jest rozproszenie społeczności arabskiej – większe niż w przypadku Czeczenów czy Tatarów. Mam tu na myśli zarówno rozproszenie geograficzne, jak również to, że Arabowie są ludem, który łączy poczucie przynależności do niego oraz znajomość języka arabskiego. Wszystko inne natomiast ich dzieli – pochodzenie narodowe, etniczne, a także religia.

Idealna osoba, która mogłaby zatem podjąć się zadania, jakim jest badanie społeczności arabskiej w Polsce, jest zatem badacz z zakresu nauk społecznych, władający językiem arabskim i polskim, mający kontakt w lokalnej społeczności i znający jej specyfikę (a najlepiej i historię). Autor monografii *Społeczność arabska w Polsce* nie tylko łączy w sobie te wszystkie cechy, ale także jest członkiem tej społeczności ze względu na swoje pochodzenie. Ma zatem wgląd w tę społeczność, o jaki trudno byłoby jakiemukolwiek badaczowi spoza diaspory arabskiej.

Pierwsze, co rzuca się w oczy w recenzowanej publikacji, jest niewątpliwie jej objętość. Praca liczy 749 strony. Gruba oprawa i śliczna okładka autorstwa Wiktora Dyndo zachęcają do lektury, jednak 4,4 cm grubości wprowadzają niepokój, czy aby czytelnik podoła lekturze. Praca składa się z trzech części. Pierwsza dotyczyć ma diaspory arabskiej na świecie (choć tak naprawdę omawia nie tyle diasporę, czyli Arabów mieszkających wśród innych ludów i narodów, co Arabów jako takich – ich historię, zamieszkiwane państwa oraz kulturę). Część druga dotyczy diaspory arabskiej w Polsce i ma charakter opisowy. Autor szeroko nakreśla historię kontaktów między Polską a światem arabskim, omawia istniejące opracowania na temat Arabów, w tym tych, którzy mieszkają w Polsce, a także charakteryzuje starą i nową arabską diasporę. Ostatnia, najobszerniejsza część książki zawiera badania własne Autora przeprowadzone wśród społeczności arabskiej mieszkającej w Polsce (choć znajduje się tu rozdział VII, który jest opisem zmian w Polsce w latach 1945–2015 i umieszczony jest między metodologią a wynikami badań).

Nawet pobieżny rzut oka na strukturę książki wskazuje, że z powodzeniem mogłaby zostać nieco ograniczona, a spis treści zmodyfikowany. Jednym z najcenniejszych rozdziałów jest niewątpliwie VIII, prezentujący wyniki badań własnych. Liczy on 354 strony, w tym przedostatni podrozdział (8.3) – 172 strony, a ostatni (8.4) – 125. Dla porównania, pozostałe dwa rozdziały w tej części liczą stron 24 i 54. Myślę, że można byłoby zaplanować strukturę publikacji w sposób bardziej zrównoważony, zwłaszcza że obecnie, to co w największym stopniu świadczy o jej oryginalności jest ukryte w znajdujących się na końcu dwóch podrozdziałach, które stanowią prawie połowę objętości całej publikacji. Uważam również, że z powodzeniem można by ograniczyć niektóre inne rozdziały – na przykład rozdział III jest prezentacją literatury (w tym literatury na temat Arabów jako takich oraz Arabów wyznających islam). Tymczasem książka dotyczy społeczności arabskiej w Polsce. Literatura tam wymieniona powinna być wykorzystywana w publikacji jako materiał (tak zresztą jest, a przypisy są niezwykle obszerne), a nie stanowić osobny przedmiot prezentacji.

Książka napisana jest przystępnym językiem, przy czym nie odmawia jej to naukowego charakteru. Tam, gdzie powinny znaleźć się odniesienia teoretyczne, niewątpliwie są. Przystępność oznacza, że monografię tę czyta się nie tylko jako pracę naukową, ale i opowieść badacza o jego dociekaniach i zmaganiach badawczych, wnioskach i przemyśleniach. Jest to zatem z jednej strony opis badań, z drugiej zaś wgląd w to, w jaki sposób te badania zostały krok po kroku zrealizowane. Autor nie stroni od dygresji dotyczących zagadnień, które go akurat zainteresowały, albo takich, o których po prostu chce więcej napisać. Często znajdują się one w przypisach, a czasami w tekście głównym. Dzięki tej lekturze można zatem zwiększyć swoją wiedzę o seksturystyce, czy o perypetiach saudyjskich studentów na polskich uczelniach.

Praca została bardzo bogato udokumentowana, a podstawa źródłowa jest imponująca. Czasami wydaje się, że Autor przywiązuje do tych przypisów zbyt dużą wagę – wydaje się, że tłumaczenie słowa 'islam' na język polski nie wymaga odniesienia do literatury jako źródła (s. 82), podobnie jak wymienienie dogmatów wiary muzułmańskiej (s. 84). Często jednak dociekliwość Autora pełni dodatkowe funkcje poznawcze, bo odnosząc się do źródła sam je recenzuje, nie stroniąc tam, gdzie trzeba, od krytyki (np. s. 124–125) i nie obawiając się jej.

Najciekawszą część monografii stanowią badania własne Autora, które oparte są na bogatym i różnorodnym materialne badawczym – ankiecie internetowej, wywiadach eksperckich oraz indywidualnych wywiadach pogłębionych wśród stu przedstawicieli diaspory arabskiej i takiej samej liczby Polaków. Zastrzeżenie może

budzić brak kobiet wśród setki przebadanych Arabów, jednak należy pamiętać, że arabska imigracja do Polski jest bardzo silnie zmaskulinizowana, co zresztą Autor tłumaczy na kolejnych stronach książki. Cenne są wypowiedzi badanych przytaczane w często długich cytatach. Pozwalają one na zrozumienie i poznanie punktu widzenia respondentów, którzy dzięki temu stają się, można by powiedzieć, bohaterami książki. Przydałyby się jednak pod koniec każdego tematu czy podrozdziału dłuższe podsumowania dla mniej wprawnego czytelnika, który może zgubić się w ogromie informacji i opinii po kilkunastostronicowej lekturze.

Z przedstawionych badań wyłania się ciekawy obraz diaspory arabskiej, a także opis Polski jej oczami. W wypowiedziach respondentów przeplatają się wątki dotyczące kulturowej odmienności i podobieństw, a także realiów życia w Polsce przed 1989 r. Uzyskujemy zatem nie tylko obraz zmagań i codzienności przedstawicieli diaspory arabskiej w Polsce, ale i obraz naszego kraju widzianego ich oczami. W szczególności stara diaspora arabska jest bacznym obserwatorem zmian, jakie zachodzą w Polsce, a jednocześnie ich uczestnikiem. Jak pisze sam Autor „zapewne każdy Czytelnik w wypowiedziach respondentów arabskich odnajdzie przynajmniej elementy swoich własnych opinii" (s. 682). A jak głosi porzekadło, gdzie dwóch Polaków, tam trzy opinie – stąd i opinie respondentów arabskich są różne (i być może dlatego postulowane przeze mnie ich podsumowanie byłoby zadaniem karkołomnym).