Legal Policy of the European Union in the Sphere of Migration and the Significance of Its Citizens' Security Sense for the Future

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Abstract

The necessity of the single migration- and terrorism-related legal policy development within the European Union is undisputed. It may turn out, however, that measures taken would not bring any improvement unless the priorities within such values as equality, respect for diversity, free movement of persons, solidarity and citizens' security are previously established, sometimes – with a new content. The Author takes the position that the values considered now to be the core of the EU existence and its key achievement can underpin its disintegration. The escalation of migration stimulates centrifugal destructive movements reflected in the increasing impact of the renationalisation philosophy of thinking about Europe on the Community solidarity, fossilisation of social moods and expectations, growing popularity of right-wing parties. All these, in consequence, foster the fossilisation and restrictiveness of law. It is related in part to the fear of globalisation and in part to the excessive regulations at the macro level, therefore to the breach of self-identification security that is getting more and more apparent nowadays.

From that perspective, the separation of the contradictions that have arisen between the basic EU values as regards providing single legal policy in the migration area seems to be cognitively valuable. Another issue is to answer the question how this wave of refugees has escalated and whose interest is currently in the destabilisation of Europe. The question is all the more important that the refugees are not heading towards other culturally closer Islamic countries or the USA but the pillar-states of the EU.

Keywords: migration policy, refugees, solidarity, fossilisation of societies, security of self-identification.

Introduction

Increasing processes of migration into Europe are a test for the European solidarity and cohesion as well as pragmatism of functioning of its structures.* They have emphasised the need to find solutions that would avert the present situation and first of all would prevent the similar consequences in the long term. The problem was already recognised in November 2014, even before Jean Claude Juncker took up his duties as the President of the European Commission. It was considered one of the ten challenges of the contemporary Europe. Furthermore, it was included in the European Agenda on Migration of 13 May 2015, prepared as the response to European citizens' concern on the inefficient functioning of the European asylum law. [7] Two types of measures have been determined in the Agenda: current ones, related to the growing flood of migrants and long-term ones, designed to rectify the situation in the future. The latter is also discussed in this article.

The fact remains that the development of the common legal policy on migration has failed and there has been no single definition of terrorism to the present day. In consequence, having had numerous theoretical concepts, we also experience several approaches in reaction to the escalating migration process, starting from the *Willkommenspolitik* (welcome policy) [7] and ending with constructing border fences or migrants' forced detention. The essence of the matter seems not to be confined merely to the lack of legislation but to the lack of strategy that would be further reflected in the legal form. In order to fulfil its ordering and educational functions in a proper way, law ought to have a joint, transparent and socially accepted idea behind [12, 118–119]. The issue of migration belongs to the sphere of citizens' security, therefore their rights and obligations. It has its own normative as well as, first of all, a subjective dimension, including an individually taken sense of occurrence.

There is a large number of examples when a law made for the implementation of certain objectives, is used quite differently from legislators' intentions [17, 9]. In this context, the analysis of legal life should include formal and legal as well as non-legal (namely in a manner of law application) aspects. Therefore, it is not about the creation of further prohibitions or orders but whether they will be applied in the appropriate purpose of the common good [8, 430]. That being the case, normative aspects of law as well as all other matters, normatively unnamed but directly connected with the overriding principles of each democratic country [10, 227] need to be analysed.

* In 2014, 276 113 migrants entered Europe by sea, that means 138% more than in 2013. Retrieved from: www.europa.eu.

On the essence of divagation

Having appreciated the EU actions of organisational and structural nature that are necessary for normalising the present situation, as well as debates over the European migration policy, starting discussions on the broader issue – the vision of uniformity and solidarity background of the European Union as a guarantor of the common good and the safety of the national states and their citizens – seems to be of key significance. The migration processes have infringed the existing stability and highlighted latent distinctiveness and areas of tension. What is more, they have created the new ones. In that context, the migration processes have played a positive role, unless they would not contribute to the reflection on the stability-frozen or new areas of tension, and, in consequence, on the identity and position of the Union as well as its attitude towards the interests of the member states and current international situation. It is impossible to create efficiently functioning legislation without determining a value system out of the social context.

My guiding thesis is that the European Union, seeking the fulfilment of its fundamental values such as democracy, liberty, equality, solidarity, respect for diversity, free movement of persons, may lead to its own collapse. The values in themselves have become a threat for the UE security as a whole and for its individual member states.

It is a fact that there are ever more intensive voices in developing a common migration policy, precise separation between the status of a refugee and an emigrant and unambiguous definition of terrorism. Another fact is that the conservative migration policy combined with the economic attractiveness of Europe provides an impetus for the growth of refugee processes. Europe is not prepared, staying faithful to its fundamental values under solidarity policy, to ensure that its citizens have the right to benefit fully from them.

Revision of the existing priorities in the frame of such values and principles of the EU civilization standards as citizens' security, equality, solidarity, respect for diversity, free movement of persons, remains a major challenge. It is critical to find *modus vivendi* that would eliminate outlined contradictions between the values without abandoning them. This applies to all fields of state activity from political and military ones to social, cultural and custom-related. It may appear that some of them will have to be redefined in order to correspond not to inward-looking short-term necessity but to modern development processes [more: 11]. It is required for increasing erosion of social confidence in authorities who decide on the Union and states cohesion and therefore their security and legitimacy. Areas of tension are numerous although five of them deserve special attention.

Areas of tension

Area No. 1. Domination of legal and institutional approach to democracy over modern social relationships, when its subjective aspect, consistent with a functional approach emphasising actions taken for a common good, is more important for societies. There is, however, no single common good and its perception depends on social, cultural, religious, historical and other factors. Thus, it is difficult to speak about one single democracy, because there is always some kind of democracy. This does not change, however, the validity of Giovanni Santori's statement: it could be considered anything.* Actions taken in Afghanistan, Iraq, Libya, and, at present, in Syria, did not result in stabilisation of the situation. Moreover, they generated the escalation of security threat into the areas where it had occurred occasionally until then.

Area No. 2. Multicultural policy assuming creation of a society in which various cultures will assimilate, does not exist, in fact. In case of significant cultural, religious or social discrepancies, the process of bottom-up assimilation with the host country's culture does not take place. Separate islands are created instead, which act according to their own rights and rules [4, 2]. Such *ad hoc* measures as creation of reservations or islands, adopted by states in the name of national interest protection, and therefore citizens' safety, merely staunch the situation also through the spirit of strengthening on a bottom-up basis ethnic, religious, etc. solidarity.** The experience of such countries as Australia and the USA proves this.

However, the idea of sealing borders faces the allegation of pushing refugees away from potential shelters and acting contrary to the 1951 Geneva Convention Relating to the Status of Refugees as well as inhuman behaviour. Mainly German politicians – Chancellor Angela Merkel and President Joachim Gauck argue for the need of receiving refugees. In spite of that, the Agreement of 28 January 2016 known as *Asylpaket II* was concluded. It concerns the limitations of migrants' residence on the territory of Germany. Two demands of migration opposition are included in the Agreement: opening of “hotspots” – reception centres where applications of people whose reception is less probable would be examined under an expedited procedure, and introduction of two-year restriction in the right to family reunification for people who do not meet the requirements for recognising refugee status within the meaning of the 1951 Geneva Convention, that is those who were not directly persecuted or came from the so-called safe third countries and were granted the right of residence in Germany on the basis of subsidiary protection [19].

* That does not mean that democracy is anything. More: Satori G. *Teoria demokracji*. Warszawa, 1998.

** Hungary closed their borders with Serbia and Croatia. Slovenia and Austria did the same. Norway introduced the regulation of turning back illegal emigrants from the territory of Russia. Singular states of the Schengen Area exercised their right to temporary restoration of border control.

Area No. 3. Restrictive legal policy in terms of economic emigration under the label protection of the market *versus* idealistic policy for refugees with solidarity and aid values. The EU visa process involves meeting of certain requirements according to the country of origin. Getting a work permit is even more difficult. Obtaining such a visa is almost beyond the reach for citizens from many countries. The situation is similar in case of asylum process. On the other hand, group arrivals as a consequence of an escape from fragile countries is governed by the principle of solidarity and aid, or, recalling Angela Merkel's term, *Leitkultur* (guiding or leading culture). [5] Moreover, the more massive, the simpler, as it less controllable. Refugees receive social assistance and are not condemned to look for their place alone (at an early stage). Among the migrants, there are refugees and also economic emigrants or members of terrorist groups. It is estimated that 57% of refugees are men, that means people who intend to settle and apply for reuniting with their families in future. The European Union, due to the lack of coordination of its policies, *nolens volens* not only fosters the process of growing number of refugees, but also discredits public conviction of legitimacy of established values and principles. This is confirmed by polls conducted in Germany, the country named by a great number of immigrants as their final destination. In the survey carried out for the German daily newspaper "Bild" (22–25 January 2016) the governing coalition CDU/CSU received 32.5% of votes whereas anti-immigration AfD (*Alternative für Deutschland* – Alternative for Germany), established in February 2013, took third place with 13% score [20].

Area No. 4. Fulfilment of the constitutional role in terms of ensuring citizens' security *versus* migration policy (in the broad sense). Aside from a specific definition of safety, there is an issue of the lack of security system for the EU citizens from enjoying our rights and freedoms by migrants. The statement of Cologne mayor, Henriette Rieker, suggesting that women should adopt new models of behaviour helping them to avoid sexual attacks, may sound controversial [6].

Area No. 5. Excessive legal mega-regulations, including the EU parities, etc. where everyone seeks the safety of their self-identity. The growth of these phenomena is sometimes connected with the social misunderstanding of globalisation processes or with the ambiguities of the EU policy. The grassroots centrifugal movement is being formed, with its usual renationalisation of thinking about a state, Europe and the world. This influences the EU solidarity, fossilisation of social approaches and behaviour as well as rapid rise of right-wing ideologies, which, in consequence, will lead to the radicalisation of legislation and perhaps the domination of the individual over the common.

Instead of conclusion

There are numerous reasons for creation of the above tension areas. One may argue over social incomprehension of globalisation processes, fear of novelty, excessive legislation, growth of deciding for one another. It is undeniable, however, that the European

Union is still unprepared to react to consequences of its own actions and that aggravates another problem which may contribute to its further weakness. In other words, a dangerous policy has been undertaken, the results of which are unpredictable. There is also no overall and consistent plan of protection from its consequences. The existing reaction to threats through institutional and legal measures, as well as multiplication of structures, seems to be even more destructive than integral element. Without the strategic, political vision of self-existence, that results in creation of the so called “second front” – unifying in objection. In comparison to other cultures, religions, customs, ways of solving problems, a question arises about the scope of common and distinct issues we are to accept within the frame of solidarity – how much of community should be in the Union and how much of diversity.

However, since there are some cracks in the unity of the EU, another question arises – whose interest is to violate the stability of Europe. The migration problem actually did not exist until the events in Afghanistan, Iraq, Libya and Syria. It appeared along with the attempt to export the EU model of perceiving reality. It was created as the result of our European strive to impose a definite or, at the same time, an indefinite cultural model. Islamic refugees do not choose richer Arab countries, those that seem to be in cultural, religious and linguistic terms natural destinations – they choose Europe. Countries like the USA and Australia are beyond their interest.

We could discuss the legislation and its content. The traditional approach to legal regimes [1, 13–17; 2, 59–62; 9, 147–148; 14, 4–10; 16, 100–109; 18, 172–176] fosters only determination for normative basis of settling various issues of social relationships. It is limited, however, to formal and normative regularities that do not correspond to the social ones. Legal regime, is not only regulated by legislation, but, first of all, it is regulated by the way how they operate. This decides about the position in which the state strives to the balance of various interests occurring in a society and determines and subordinates other values [11, 17–18]. To make this happen, however, a thrust is necessary.

Eiropas Savienības tiesiskā politika migrācijas jomā un tās nozīme iedzīvotāju drošības sajūtas par nākotni nodrošināšanā

Kopsavilkums

Vienotas ar migrāciju un terorismu saistītas tiesiskās politikas nepieciešamība Eiropas Savienībā ir neapstrīdama. Tomēr var izrādīties, ka veiktie pasākumi neradīs nekādu uzlabojumu, ja vien kā prioritātes netiks izvirzītas tādas vērtības kā vienlīdzība, cieņa pret dažādību, personu brīva pārvietošanās, solidaritāte un iedzīvotāju drošība, kas jau ir paredzētas, dažreiz – ar jaunu saturu.

Autors pauž nostāju, ka vērtības, kas šobrīd ir ES pastāvēšanas kodols un tās galvenais sasniegums, var veicināt tās sabrukumu. Migrācijas eskalācija stimulē destruktīvas centrbēdzes kustības, kas atspoguļojas pieaugošā ietekmē uz renacionalizācijas filozofiju, domājot par Eiropas Kopienas solidaritāti, sociālo noskaņu un vēlmju fosilizāciju, labējo partiju pieaugošo popularitāti. Tas viss var veicināt likuma fosilizāciju un modifikāciju, turklāt tas daļēji ir saistīts ar bailēm no globalizācijas un ar pārmērīgajiem noteikumiem makrolīmenī, līdz ar to pārkāpjot pašidentifikācijas drošību. No šī viedokļa raugoties, pretrunu, kas radušās starp galvenajām ES pamatvērtībām un attiecībā uz vienotu tiesisku politiku migrācijas jomā, nodalīšana ir neapstrīdami nepieciešama. Vēl viens jautājums, kas prasa atbildi, ir: kādēļ šis bēgļu vilnis ir eskalējies un kā interesēs pašlaik notiek destabilizācija Eiropā? Un kāpēc bēgļi nedodas uz citām kultūras ziņā tuvākām islāma valstīm vai ASV, bet gan tieši uz Eiropu?

Atslēgvārdi: migrācijas politika, bēgļi, solidaritāte, sabiedrības fosilizācija, pašidentifikācijas drošība.

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