

*Dragan T. BATAVELJIĆ**
Faculty of Law, University of Kragujevac

*Vanda B. BOŽIĆ***
University of Zagreb

CONTEMPORARY MIGRANT CRISIS WITH THE SPECIAL OVERVIEW OF THE PROTECTION OF CONSTITUTIONAL RIGHTS OF THE CITIZENS OF IMMIGRATION COUNTRIES

Abstract: The contemporary migrant (refugee) crisis that began in 2010 in the countries of North Africa and the Middle East is by no means accidental, but a very well-planned and executed migration of people. This plan slowly leads to the formation of a completely new world order in such a way as to destroy the previous national one, and create a completely new limited sovereignty. The de-sovereignization of nation-states has become a scourge of the modern age. A typical example is the European Union, which, in the era of the contemporary migrant crisis, has set itself a great challenge and task, to preserve the national identity of its member states. In the paper, the authors presented the legal and institutional framework for the protection of basic human rights of migrants. The paper contains a special reference to respect for the constitutional rights of citizens of the countries of immigration in the age of the migrant crisis. The contemporary migrant crisis has led to an enormous increase in people smuggling, but also influenced the increase in human trafficking. In the paper, the authors point to the distinction between human smuggling as a criminal offense against public order and peace and human trafficking as a criminal offense against humanity and other goods protected by international law. In the final deliberations, it was pointed out the necessity of respecting international documents, encouraging national, regional and global cooperation, as well as public condemnation of discrimination and hate speech.

Keywords: migrant crisis, de-sovereignization, relocation of people, migrant smuggling, protection of human rights.

INTRODUCTORY CONSIDERATIONS

Freedom of movement and residence is a basic human right guaranteed by the constitutions of a large number of democratic states. The national legislation of the Republic of Serbia is harmonized with the European Convention on Human Rights from 1950 (Law on the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, “Official Gazette of SCG - International

* Professor, ORCID 0000-0001-7396-0705, bataveljic@jura.kg.ac.rs

** Associate professor, ORCID 0000-0002-5905-1916, bozic.vanda@gmail.com

Treaties”, no. 9/2003, 5/2005 and 7/2005 - corr. and “Official Gazette of RS - International Agreements”, no. 12/2010 and 10/2015), which entered into force in 1953, along with 14 Protocols supplementing the said Convention. According to Art. 2. IV Protocol „everyone who is legally present in the territory of a state has, in that territory, the right to freedom of movement and the freedom to choose residence, while everyone is free to leave any country, including his own.“¹ Likewise, according to Art. 39. paragraph 1 of the Constitution of the Republic of Serbia “everyone has the right to freely move and live in the Republic of Serbia, to leave it and to return to it“ (Constitution of the Republic of Serbia, “Official Gazette of RS“, no. 98/2006 and 115/2021).

Migration (lat. migratio) is a word that implies the relocation (movement) of the population of one country within the borders of that same country (internal migration) or the relocation (movement) of the population from one country to another (external migration), for temporary or permanent settlement (Mastilo 2001: 228). Internal migration has been the dominant form throughout history (and up to today), but a lot has changed in recent years. It is important to point out that if the state does not manage migration at the national level, there will be a situation of limitation or loss of the sovereignty of the state itself, i.e. de-sovereignation. The term migration management refers to the state’s ability to independently decide on the entry and stay of persons who are not its citizens.

Population migrations can be individual, family, group, as well as mass population migrations. When we talk about mass population migrations, we cannot fail to mention the events called the “Arab Spring“, which began in 2010 with protests and demonstrations in Tunisia and Egypt, and led to a change of government. They also affect Sudan, Tunisia, Egypt, Libya, Bahrain, Syria, Yemen, Algeria, Iraq, Jordan (Nikač, Božić 2016: 194) and other countries that are affected by war destruction, terrorism and refugees.

As pointed out by *Tančić & Božić*, after the very turbulent events in Libya and the beginning of the civil war in Syria, in 2010 the first mass migration wave of people from Asia to the European Union countries was recorded, due to bad economic conditions and war events (Tančić, Božić 2022: 87).

THE FACTORS INFLUENCING THE WEAKENING AND STRENGTHENING OF THE NATIONAL IDENTITY OF EUROPEAN COUNTRIES DUE TO THE MIGRANT CRISIS

The fact is that the contemporary migrant crisis represents a significant challenge for the preservation of the national identity of the members of the European Union. The problems of migration, cultural (national) identity and hyperglobalization (which, it can easily be concluded, is planned in advance and growing every day), represent the most significant issues in modern society, which should be solved as soon as possible, considering that the mentioned issues (problems) have marked modern world. However, it seems that some social processes have got out of control and are taking place on

1 IV Protocol to the European Convention on Human Rights from 1950, Strasbourg, September 16, 1963.

a comprehensive, global level beyond all geographical, racial, national, religious and other barriers (Marković 2000). It should be emphasized that many modern societies face problems and challenges in how to preserve their specificities and their heritage from modern challenges and demands and global pressures that are increasing every day.

Namely, the European countries accepted to make and implement huge changes on their road towards the accession to European Union. They signed the binding² Maastricht treaty in 1992 and committed themselves to respecting the rights and principles that laid the foundation of their European Union family. This treaty was vital for further building and development of European Union, but it also allows member states to, while working on enhancing multicultural dimension of their union, preserve and enhance their national and minor identities. Not all member states share common history, tradition and feelings of ethnic and national identity. However, through the accession process and expanding of European Union, member states have recognized the creation of a supranational body along with the rights and obligations of its legal framework. In this way, they have largely reshaped the very nature of ethnic identities in Central, Eastern and Southeastern Europe, which has led to the creation of a completely new European identity that reflects the real process of globalization and the trend of multiculturalism. The intensive migrations which started as of 2015 and resulted in the relocation of millions of migrants from North Africa and South-East Asia to the most developed EU countries – Germany, Sweden, Austria, France, etc., have contributed to raising the awareness of belonging to one nation, that is of loyalty to their own country. These two opposing processes, provoked by the contemporary migrant crisis, have caused certain conflicts in EU countries and, therefore, the co-authors of this paper will dedicate its the final part to the analysis of this crisis and the possibility for overcoming the resulting conflicts.

There is no doubt that we live in a society whose every single segment is affected by globalization as the process of increasingly integrated global interactions and integration among people. It permeates all fields of social life and its expansion to all parts of the world (literally) is the result of contemporary development, before all, of the information and communication technologies, as well as of world networking into one large interdependent system. Therefore, any attempt to deny global flows and withdraw to a self-isolation is doomed to fail although the process itself has both positive and negative effects. It should be acknowledged that the technological development has enabled new forms of business operations, despite the geographical remoteness of business partners. Given the fact that majority of countries around the world accepted globalization trends and the models of market-oriented economy, at the same time they recognized the system of universal values and rights which has generated a number of “theoretical, philosophical, liberal and communitary paradigms in line with the implementation of the policy of multiculturalism“ (Fukuyama 1997: 13).

From what was afore mentioned, it can be concluded that the globalization process has yielded new social forms and principles and that, meanwhile, new global markets and classes have been established. However, what is characteristic for contemporary

2 The treaty on European Union (Maastricht Treaty) was signed in Dutch city Maastricht in 1992 and came into effect at the end of 1993; it created a new political entity – the European Union.

society is that it allows the survival of trans-nationalistic capitalist classes, but only those in accord with various models of market-oriented economies and the integration in global division of labor. This all has led to the creation of a global culture, global powers, international financial alliances and a series of international organizations devoid of national identity. Such organizations are, for example, NATO, IMF, the World Bank, transnational communication networks and other similar organizations. However, we can conclude here that the national identity has managed to survive in this contemporary globalized society. Therefore, there are some beliefs that modern states, such as EU member states, are multinational and that their joining into European Union represents a remarkable progress in the field of international relations.

However, here we should emphasize that there are various views as for the relationship between an individual state and globalization process where it is significant to note the different position of the states which are major actors in globalization, such as the economically and military leading countries, and the position of the third world countries. There is no doubt that the European Union is considered a great step forward internationally, but it does not presuppose the existence of a strong European identity. Namely, it is modernization, economic development and globalization that underlined the need for re-defining of the identity³. However, there are even different stands between the countries which are the major actors in globalization. Thus we can distinguish current global changes which are reflected, before all, in religious fundamentalism, and terrorism, while, on the other hand, contemporary globalization and strengthening processes encourage universalism and impose a continuous pressure on the *awakening and strengthening of national* consciousness.

Based on the afore mentioned, we can conclude that European Union legal framework represents a major factor influencing the weakening of the national identity of European countries bearing in mind that it was established as a result of cooperation and integration of its current member states. But also here we should take into account that it represents an intergovernmental and supranational union formed on the basis of a treaty which binds all member states to respect the rights and obligations that are equal for all of them. Yet, although the development and strengthening of European identity is one of its basic goals, it is necessary that all states should preserve their own national identities. Namely, despite numerous differences that exist between European states, it is possible to organize a common life at a higher level, and the legal framework regulating this arrangement can include the areas such as, political cooperation, harmonization of national rights, development of commercial relations, economic and cultural cooperation, etc. Starting from the founding treaty, via a number of contracts and agreements which are often referred to, as well as those that, by rule, are not frequently mentioned, the EU member states have established strong legal relations. There is no doubt that this new supranational legal framework has directly transformed the everyday life of EU citizens. It has been established on the basis of many compromises made by some European countries, the major one being giving up a part of their national sovereignty on behalf of the alliance. Only by sacrificing a part of their national identity,

3 And correspondingly, to an identity crisis.

the EU member states contributed to the development of the European identity, which should be, there is no doubt, respected and further cherished.

After a century of suffering and general decline and regression of the entire system, European countries are now facing a crisis which has affected them to different extents. The century behind us (the 20th century) has left the unforeseen consequences since it witnessed the outbreaks of two large world wars, the Balkan wars and several other, less intensive armed conflicts. They resulted in large-scale destruction, high death toll and displacement and suffering of millions of people (according to some estimates, more than 100 million), as well as economic, cultural and other forms of decline. When the conditions improved for European countries to continue with their development and progress, a large crisis occurred again, the migrant crisis, which has had the largest consequences on the Old Continent (Europe). This crisis appeared to be a trigger for raising awareness of national identity and feelings of national pride of EU member states. Namely, although the European Union represents a common family for 27 countries and is based on four principal freedoms – free movement of goods, people, service and capital (these freedoms are absolute and inviolable), they are nevertheless often violated, while the criteria based on which European Union was established, have been often neglected. This can be verified by observing different attitudes and policies of EU states towards migration, such as: closing of borders, decreasing the *quota* for the number of *refugees and asylum-seekers* to be admitted, increasing the requirements and criteria for their acceptance, etc.

Is today's society going in the right direction and what needs to be done to ensure the right path? What represents a major concern, not only for the European continent, but also for the global community, is fundamentalism and aggressive nationalism which often result in religious fundamentalism and terrorism. However, the modern process of globalization in today's age encourages universalism and leads to the weakening of the importance of nation and tradition. This means that this process really changes the look of the world, but, since globalization consists of a series of unpredictable processes, the risks are likely to occur with the consequences for all of us. Rodrik believes that it is not possible to have both democracy, national self-determination and complete globalization, so the current concept of globalization should be changed (more: Rodrik 2012). Moreover, he thinks that the creation of a global democratic government is just the product of imagination and is, therefore, supporting the strengthening of national democracies, while the other authors (such as Edmund Burke) find the solution in preserving the tradition and continuity (Burke 2001: 214). Rodrik is aware of the fact that the point of conservatism is to preserve national identity, which represents the most important existential and political determinant. If the situation was different (and the co-authors of this paper do not think it was), that is, if there were people who never looked backward to their ancestors, they would not look forward to posterity either⁴. This means that today we are facing the crisis of national identity since the global social requirements of modern states and societies have become multiethnic, while the concepts of nation and national identity are the phenomena created during a long process of social changes.

4 Also, there is an old saying: "A nation who forgets its past has no future".

One of the important factors influencing the weakening of national identity is the policy of multiculturalism which today plays one of key roles in the organization of European social area. Therefore, in order to analyze the current situation in Europe it is necessary to take into consideration the concepts of culture, cultural pluralism and identity. Multiculturalism represents a phenomenon which is not easy to define since it is highly complex, whereas it should be noted that this concept, according to its original meaning and terminology is close to the concept of cultural pluralism. However, these two concepts should be distinguished, since, looking back through history, cultural pluralism preceded multiculturalism. The first concept basically assumes the relationship between national cultures, while the second assumes the relationship between cultures that exist at subnational level. In that context here we would like to mention Andrea Semprini, who believes that cultural pluralism is the problem of developing countries, while developed countries face the challenges of multiculturalism, as a modern age phenomenon (more: Semprini 1999). Namely, the encounters of different cultures are today inevitable and these encounters come down to one thing – one culture accepts the elements of the other culture. Here we should also mention the view expressed by professor Milan Podunavac who affirms that peace and stability are attained by cherishing the common culture where the highest price is paid by minority groups (Podunavac 2000: 77). This is the reason why European Union supports (and develops) multiculturalism, while the Western Balkan countries, for example, share many common cultural traits and similar mother tongues.

On one hand the legal framework of the European Union is a factor influencing the weakening of the national identity of its member states, while, on the other hand, migrations represent a factor influencing its strengthening. Namely, a huge number of migrants have crossed the European border since 2010, generating the crisis in all fields of social life and causing a division among EU member states related to finding the best solutions how to overcome this crisis, or at least, to minimize it. Of course, it should be emphasized that current migrations have both positive and negative effects (which are prevailing). The negative effects of this crisis include: the possibility of terrorists travelling amongst refugees, particularly amongst families and children (infiltration), sharp growth of public expenses caused by accepting migrants and offering them shelter, slowing down the movement of people, goods and services, as the principle freedoms of European Union based on open borders policy, reestablishing border controls within Schengen area, further increase of budget of some European countries for the purpose of reducing irregular migration⁵; breach of trust among EU member states⁶; increase of unemployment and shadow economy, on one side, and salary and benefits cuts on the other side, fear and distrust of refugees and their values, and the increased number of conflicts between local population and migrants (Subošić, Vasiljević 2017: 87). Besides afore mentioned problems, the migrant crisis has generated some positive effects, much smaller in number than negative ones. They include: the positive influence on European labor markets, that is, when it comes

5 The activities, such as increased border security, wire fences, deployment of police and military troops, etc.

6 This breach of trust is characteristic for both EU member states and EU candidate countries.

to the skills, the immigrants fill labor shortages, that is take the jobs which the local population does not want to do⁷. However, this is only partially true since the low-skilled immigrants cannot fill the shortages of high-skilled jobs which are in demand and, therefore, cannot effect the market and economic growth. Finally, the positive effect of migrations is the strengthening of national consciousness (that, unfortunately, has declined in recent decades) and motivation for preserving national identity of European countries, particularly EU member states.

Here we should draw attention to the fact that migration is an ordinary phenomenon which has taken places for centuries. The movement of people was particularly intensive in the 20th century when the people from less developed countries went to rich countries all over the world in search for their fortune. After a while they managed to become the citizens of the domicile countries, learned their language and alphabet, accepted their culture and assimilated into their society, that is the various nations or ethnic groups blended in the dominant culture. It is quite natural that immigrants respect laws, language, history, culture, religion and other values of the host country which welcomed them. However, the contemporary migrant crisis has generated assimilation challenges based on the origin of majority of immigrants and their choice of destination countries, making the assimilations of so distinct cultures almost impossible. Namely, Islam requires from its followers diligent performance of religious and traditional duties and practices. Majority of immigrants come from the countries whose culture and tradition are based on strict principals and non-democratic forms. Yet, they choose to settle and work, and eventually become the citizens of EU countries which are based on democratic values and the principle of tolerance. This is why an increasing number of European states view migrants as a threat to their culture, their national identity, economy, even to entire nation. No matter how benevolent European countries are and wish to help the immigrants, they (and their citizens, the followers of other religions) will be considered by Islamists as infidels and the assimilation of their cultures and mutual respect of different religions will be difficult to achieve.

Although European Union supports and develops this multiculturalistic policy, the question remains how it will harmonize this large cultural diversity. Namely, the multiculturalism promotes (and requires) intercultural understanding aimed at combating discrimination, isolation and violence since such adverse behavior may lead to numerous conflicts in the society. The inconsistent policies towards migration and multiculturalism among EU states can also be the sources of many conflicts and reflect the discordance, discrepancy and problems (ex. economic, political, etc.) among them. All of this point to the fact that, today, cultural contacts and encounters are a trending topic to consider and debate.

We cannot neglect the fact that, so called “ethnic dispersion” (distribution of the members of different ethnic groups) and cultural diversity may enrich societies on one side, but they also can be the reason of ethnic tensions, antagonism and conflicts

7 This “positive effect” is the most quoted reason for admitting the immigrants (large number of irregular immigrants without ID documents). Among the countries which accepted irregular immigrants based on the need for the work force are, before all, Germany, France, Austria, Switzerland and other highly developed countries.

between various ethnic groups⁸ on the other. Therefore, it is necessary to have a long-term action plan for assimilating migrants into European societies, mainly for the purpose of precluding and avoiding potential inter-ethnic conflicts. Such plan should include, among other things, a constant communication, mutual respect and tolerance of diversity, preserving the tradition and customs of those countries which accepted asylum seekers, cherishing of migrants' cultural patterns and implementing the migrant inclusion and assimilation policies which would contribute to a systemic integration of migrants into social life, educational system, labor market of domicile countries while preserving their national characteristics and values.

Therefore, it is not surprising that Fukuyama points to a significant increase of the role which culture plays in the global society and discusses the clashes of civilizations (better say religions – Catholic, Islamic, Orthodox, Confucian etc.), and not the conflicts of ideologies (such as fascism, socialism, democracy, etc.), (Fukuyama 1997: 15). Also, it is important to emphasize that building up tolerance is of key importance (and a constitutional requirement), along with deep understanding of other cultures, customs and values. Unfortunately, the regard for other people's diversity is currently fading since the migrations of labor force have caused extraordinary cultural changes and resulted rather in self-isolation than in opening towards the outer world. Hence, the question of preserving the specific national cultures that is a national identity, with simultaneous respect of other nation's cultural patterns, customs and traditions is getting more in focus in light of contemporary migrant crisis.

LEGAL ASPECTS OF HUMAN RIGHTS PROTECTION

Majority of constitutions in contemporary democracies are firmly rooted on their positions to protect fundamental human rights proclaimed in generally accepted international treaties and regulations. They include, among other things, the right to dignified and free development of personality, right to life, inviolability of physical and mental integrity, prohibition of slavery and forced labor (more Božić II 2016: 335-352), right to safety and security, right to a fair trial (more Bataveljić, Božić, Petrović 2022: 297-311), right to legal capacity, right to citizenship, right to free movement, right to inviolability of residence, right to secrecy of letters and correspondence (more: Božić, Tančić 2022), right to protection of personal data, freedom of thought, conscience and religion, right to promote the respect for diversity, prohibition of the incitement of religious, racial and national hatred, freedom to peaceful assembly, freedom to association, right to asylum, right to property, right to work, right to healthy environment, prohibition of discrimination of national minorities, prohibition of forced assimilation, right to preserving personal identity, right to association with compatriots, right to promote the spirit of tolerance, etc. Of course, there is always a possibility for better and more efficient protection of these rights and governments are constantly striving to improve the mechanism of human rights protection.

8 The principal reason of these conflicts is the existence of different spiritual, cultural, conceptual, ideological and other orientations.

Here it is important to emphasize the importance of the legal protection of migrants. Namely, the Convention related to the status of refugees foresees the following definition of a refugee: „any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.“⁹ This Convention guarantees the refugees that their personal status shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence, as well as that the countries of migrants' destination shall respect their personal rights. The convention further guarantees the non-discrimination based on refugees' race, religion, and origin, as well as the freedom of religious education of their children, then the freedom related to the acquisition of movable and immovable property, as well as the protection of industrial property, inventions, designs, trademarks, trade names and the rights in literary, artistic and scientific works.

The convention also guarantees the refugees the rights to non-political and non-profit-making associations and trade unions, free access to the courts of law and legal protection.

As for the employment rights, the countries shall accord to refugees, lawfully staying in their territory, the same treatment accorded to nationals of a foreign country in the same circumstances. The purpose of this regulation is to protect the access of domicile population to labor market. A refugee may not invoke the benefit of this provision if he has completed the required term of residence in the country and if his labor rights are made equal to domicile population in terms of salary, benefits, annual leave, sick leaves, etc. Provided he can produce a valid diploma, a refugee may apply for any job position he wants under conditions which are not more favorable than those offered to other foreign nationals. The countries shall also provide the basic housing to refugees, as well as they shall accord to refugees the same treatment as it is accorded to nationals with respect to elementary education with the possibility to continue secondary and higher education. Their qualifications and diploma shall be recognized provided they meet the applicable laws and regulations of the given country of residence. In addition, the refugees have the right to choose their place of residence and to move freely within the territory of the given country subject to regulations applicable to foreigners generally in the same circumstances. However, due to their specific situation and status which prevents them to earn profit and acquire personal property, refugees shall be in more favorable position in relation to imposed fiscal charges than domicile population.

Article 31 of the Convention related to the status of refugees regulates the position of refugees who are unlawfully in the country of refuge. Thus, the countries shall not impose penalties, on account of their illegal entry or presence, on refugees

9 Geneva Convention on the Status of Refugees from 1951, entered into force on April 22, 1954, (Official Gazette of the FNR – International Treaties, No. 7/60). Available at: <https://www.unhcr.org/rs/wp-content/uploads/sites/40/2021/04/1951RefugeeConventionSer.pdf>, accessed 03.03.2021.

who are coming directly from a territory where their life or freedom was threatened. The countries shall not expel a refugee who is lawfully in their territory since this could pose a risk to his life and freedom. A refugee may be expelled only on the grounds of compelling reasons of national security or public order. We have to admit that these provisions represent important legacy of contemporary civilization and democratic decision-making process, since it is a duty of all of us to help people who found themselves in need beyond their control or wish (such as earthquakes, floods and other natural disasters). However, it often happens that refugees abuse the laws and regulations of the countries of residence since human smuggling (as the obvious form of organized crime) is rarely considered in human consciousness to be a major criminal offence.

There is no doubt that afore mentioned conducts are illegal and criminal, and that there is a need to discover, recognize and expose them in order to prevent their occurrence in future. This can be done by informing the public on the problems caused by human trafficking and human smuggling. We need to conduct campaigns aimed at raising the awareness of the causes and circumstances of this form of criminal behavior and changing the attitude that such crimes occur “somewhere else” and not on our territory. Public media, educational activities and projects conducted in pre-schools and schools for the purpose of alerting the public to the risks of this type of criminal conduct can be of great help, as well as the international conferences aimed at exchanging the experiences and best practices on this topic. An important link in the chain of solutions to these problems is the education of journalists for the purpose of introducing them to the facts to what extent is this criminal offence present in their countries, what are the possible forms of its manifestation and the methods to prevent it. Delivering accurate and timely information on preventive and repressive assistance and protection of the victims is of crucial importance and, therefore, investigative journalism plays a key role in finding possible solutions to this problem. Also, technological and research development in recent years should be more exploited for the purpose of preventing and eliminating this crime. Namely, researchers have undertaken numerous efforts to address trafficking in human beings based on a comprehensive, victim-centered approach, and by focusing on the prevention of trafficking activities, the protection and support of victims and the efficient prosecution of perpetrators.

CRIMINAL LEGAL FRAMEWORK FOR COMBATING PEOPLE SMUGGLING, ILLEGAL MIGRATION AND HUMAN TRAFFICKING

First, we would like to draw your attention to the term “human smuggling”¹⁰, which represents a form of irregular migration, and as such, a criminal act (more: Bajrektarević 2000). This type of crime is easily initiated, it does not require much of startup money or time, but brings in a large profit to smugglers (Bajrektarević, 2000). It is not rare that smugglers do not keep the promises given to migrants to help them cross the borders and, after receiving the money from migrants, they may disappear

10 English legal term is “*Smuggling*”, denoting an illegal transportation across an international border (criminal act).

although the service has not be rendered in full, or at all. Here it is important to mention the UN Conference held on December 13th, 2000 in Palermo where the UN Convention against Transnational Organized Crime was adopted¹¹, along with two enclosed Protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air (Božić 2012: 147-158). This latter Protocol foresees the obligation of the signatory countries to adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit: 1) the smuggling of migrants 2) when committed for the purpose of enabling the smuggling of migrants: producing a fraudulent travel or identity document, procuring, providing or possessing such a document, enabling a person who is not a national or a permanent resident to remain in the state concerned without complying with the necessary requirements for legally remaining in that state, etc. (Božić 2015: 845-874). According to the Palermo Protocol, *Illegal crossing of state borders and people smuggling* is a criminal offense prescribed in Article 350. Criminal code of the Republic Serbia (Božić, Nikač 2016: 101). The Republic of Serbia adopted the Law on the Ratification of the United Nations Convention against Transnational Organized Crime and its Additional Protocols on June 22, 2001, which entered into force eight days later.¹²

The provisions of EU Directive 2002/90 of November 28th, 2002¹³ foresee that each member state shall adopt appropriate sanctions on any person who intentionally or for financial gain assists a person who is not a national of a member state to enter, or transit across the territory of a member state, thus breaching the laws of the state concerned on the entry or transit of foreigners. This criminal act includes all forms of assisting a person for financial gain to illegally enter and remain in a EU member state or the state which is the signatory of Schengen treaty.

In addition to human smuggling, there is human trafficking, the activity which is also qualified as a criminal act representing one of growing problems of the modern world.

Thus, according to UN statistics, it is estimated that at the beginning of this millennium there were around 27 million slaves in the world, while 2 to 4 million people are believed to be trafficked per year,¹⁴ generating the illegal profit of 12 billion dollars on annual basis (Kovčo Vukadin, Jelenić 2003: 666). Human trafficking, as the criminal act, is regulated by a number of international acts (Simović, Božić 2021: 277), such as: 1) UN Convention against Transnational Organized Crime with two Protocols¹⁵;

11 United Nations Convention against Transnational Organized Crime, United Nations, Treaty Series, vol. 2225.

12 Law on Ratification of the United Nations Convention against Transnational Organized Crime and Additional Protocols, "Official Gazette of the FRY - International Treaties", no. 6/2001.

13 EU Directive 2002/90/EC of November 28, 2002, Available at: http://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:32002L0090#ntr3-L_2002328HR.01001701-E0003.

14 More information on: <http://www.ungift.org/docs/ungift/pdf/knowledge/ebook.pdf>.

15 Adopted by the Resolution of UN General Assembly no. 55/25 of November 15th, 2000. It was opened for signing in Palermo from December 12 to 15, 2000 and came into effect on September 2003. In Serbia, it was published in the "Official Journal of FRY" – international treaties no. 6/21

2) Brussels Declaration on Preventing and Combatting Human Trafficking¹⁶; 3) Council of Europe Convention on Action against Trafficking in Human Beings¹⁷ and 4) EU Directive 2011/36 of the *European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims*.¹⁸ According to the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the above mentioned UN Convention against Transnational Organized Crime, trafficking in human beings means the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat, or use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹⁹ Also, it should be mentioned that the provisions of Article 20 of the Council of Europe Convention on Action against Trafficking in Human Beings foresee that each state should adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts: 1) forging a travel or identity document; 2) procuring or providing such a document; 3) retaining, removing, concealing, damaging or destroying a travel or identity document of another person (Article 20). There is a number of countries whose legislation does not include a separate law on human trafficking. This is the case with the former Yugoslavia countries, such as Republic of Serbia and Republic of Croatia. Namely, these countries established the mentioned criminal conduct as a criminal offence within the framework of their criminal laws. However, it is general opinion that, given the fact how gruesome crime human trafficking is²⁰, the countries should adopt a separate law that will regulate the entire scope of the crime of human trafficking.²¹

Here we will point out to a few significant differences between these two crimes which are the subject of our analysis in this part of the paper: 1) human trafficking and 2) human smuggling. Namely, the first criminal activity may involve the trafficking of victims within the country's borders, while human smuggling involves the transportation

16 *Brussels Declaration on Preventing and Combatting Trafficking in Human Beings*, November 29th, 2002, 14981/02, European Union, available at: <https://www.refworld.org/docid/4693ac222.html>, accessed on February 15th, 2021.

17 *Convention on Action against Trafficking in Human Beings*, Treaty Series – No.197 + Explanatory Report - non official translation in Serbian, Warsaw, 2005. In Serbia, it was published in the "Official Journal of RS" – international treaties no. 19/2009.

Law on Ratification of the Council of Europe Convention on Combating Trafficking in Human Beings, "Official Gazette of RS - International Agreements", no. 19/2009.

18 *Directive 2011/36/EU of the European Parliament and of the Council of April 5th, 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (April 5th, 2011).

19 Article 3, paragraph (a) of the Protocol.

20 It includes various forms of exploitation of victims which are against the international laws, and, as such, represent the violation of human freedom and dignity.

21 The adoption of such separate laws is necessary since there are now many conflicts and ambiguity between the solutions provided in the Council of Europe Convention on Action against Trafficking in Human Beings and those foreseen in the provisions of national laws. For example, the Republic of Croatia criminal law incriminates buying, selling, transfer and mediation in these transactions, while the Convention and Palermo Protocol do not include them among the criminal offences.

and illegal entry into a foreign country. Therefore, people smuggling always includes an international element (Božić, Lisičar, Mudrić 2015: 289). Also, the goal of human trafficking is the exploitation of victims, (on different forms of exploitation of victims see: Božić, 2016: 131-152; Božić II, 2016: 335-352), while in human smuggling, the profit is earned from the illegal transportation of victims across the border. In human trafficking, the victims may or may not give their consent to be taken across the border, while in human smuggling, the victims always agree to be secretly transported across the border. Finally, the victims of human trafficking remain in contact with the traffickers who continue to control and exploit them, while the victims of human smuggling, once they have crossed the border, part with smugglers for good (Božić 2015: 845-873).²²

In recent years there has been a steep growth of irregular (illegal) border crossing on the territory of Western Balkan countries. These irregular migrations have all the characteristics of organized crime since the citizens of the “Arab spring” countries²³, have tried to illegally cross the borders of Greece, Italy, North Macedonia, Albania, Serbia, Bosnia and Herzegovina, Croatia, etc., in their attempt to reach Western Europe. In order to attain this goal, the migrants turn for help to criminal organizations involved in human smuggling. However, these migrations cause huge problems to the countries on, so called, migrant route, especially since, these illegal (but planned) movements of people from North of Africa and Middle East (mostly from Afghanistan and Syria as a result of war conflicts in these countries) have recently increased. As a result of illegal border crossing, it is difficult to be precise where most of European immigrants come from, but it is believed that most of them originate from the territory of Afghanistan, Syria, Somalia, Pakistan, Eritrea, etc. They enter Europe by crossing the borders of Turkey, Greece, Macedonia and Bulgaria. Then, they follow, so called Western Balkan migrant route through Serbia, Croatia and Hungary towards the West and North of Europe (Božić 2023).²⁴

As a result of the acquired knowledge and experience related to human trafficking and smuggling, the countries have enhanced the border control and surveillance of the migrant routes. Special attention should be paid to children, who fled their homeland as a result of armed conflicts, and without documents and often unaccompanied, found themselves in a foreign country. These children need to be placed under special care, including, among other things, the legal representation, system of guardianship, initial accommodation, measures of integration, education, access to health care, social networks, and all other measures aimed at preserving first of all their physical and mental health, but also their culture, tradition, language and other elements of their identity.

The afore mentioned migration flows can be best explained by using statistical data provided by the demography experts in the field work. For example, at the turn of the millennium, in the period from 1996 to 2001 there was a steady increase in the

22 See for more on the distinction between human smuggling as a criminal offense against public order and peace and human trafficking as a criminal offense against humanity and other goods protected by international law.

23 The “Arab spring” countries also include Tunisia, where protests started in December 2010, Egypt where the riots began in 2011, followed by Libya, Bahrein Syria, Yemen, Algeria, Iraq, Jordan, Morocco and Oman and other countries with less intensive protests, such as: Kuwait, Lebanon, Mauritania, Saudi Arabia, Sudan, West Sahara, etc.

24 See also more about the routes and directions of trafficking in human beings.

number of arrests related to human smuggling in the Republic of Croatia. Thus in 1996, this number was 3200, in 1998, 10 556, while in 2001, this number has grown to 17039 illegal attempts to cross the Croatian border (Zadnik 2002: 81-85). Of course, it is well known that the victims of human smuggling pay the smugglers a certain, usually up-front agreed amount of money, which ranges from 500 to 5000 euros. The sum depends on numerous factors, mainly on the type of transportation, the number of borders that need to be passed, the number of smuggling persons, the extent of risk involved, etc.²⁵ However, what is characteristic and needs to be emphasized here is the fact that most of illegal entries occur via designated border crossings (Božić 2015: 860-861). For this purpose, the smugglers modify vehicles, use double bottom trucks or the trucks with specially designed compartments and covers, as well as secret places for hiding the luggage, such as beneath the ceiling of the railway carriage, in the toilets, freight wagons, etc. Smugglers often use *rent-a-car* and taxi services which underlines the need for the modernization of the control and surveillance equipment used at border crossings, particularly at the borders of Western Balkan countries.

However, what seems to be the major problem which the officials are aware of, is that the flow of refugees (migrants) who are trying to illegally cross the border of certain countries outside the designated border crossings, travel without valid ID cards or passports. They travel on foot²⁶ via mountain passes, through grassy plains, or across low water rivers on foot or by boat. Therefore, the official number of refugees that were caught in irregular border crossing is not to be taken for certain - the true figure is significantly higher reflecting the true status of migration flows. If we make a comparative analysis of illegal entries per countries of citizenship, it can be concluded that the people who commit this criminal offence are the citizens of Syria and Afghanistan, followed by Albania, Pakistan, Somalia, Tunisia, Algeria, etc. What also raises concern is the fact that some cities, or their parts, are becoming Islamized, with the majority population coming from Arab speaking countries, so that the original mother tongue has become the language of minority in these cities.

CONCLUSION

The causes of migration are very different. Every democratic state must respect the personal rights of refugees and displaced persons, which means guaranteeing them the right to non-discrimination in terms of race, religion and country of origin. The aforementioned persons should be provided with the right to work, education, health care,

25 Illegal entry is the act of foreign nationals crossing the borders into a country outside the place and time of designated border crossing, avoiding border control, crossing the borders into a country with the ban on entry and stay, crossing the borders into a country with falsified or other persons' travel documents, etc.

26 If a citizen of the country which is on the migrant route and whose borders are illegally crossed on daily basis tries to reach an EU country with one missing travel document, he would be automatically rejected the entry into that country?! This represents an obvious discrimination to which the citizens have been subjected to on daily basis although their countries did not close the borders for illegal migrants due to humanitarian reasons, but they, nevertheless, face the closed borders if there is a single missing travel documents.

the right to freedom of religion and the religious upbringing of children, the right to acquire movable and immovable property, the right to the protection of industrial property, inventions, drawings, models, factory marks, commercial names, protection of literary, artistic and scientific property. In the paper, the authors point to the significant problem of the impossibility of assimilation of migrants' cultures with the domicile population, which occurs due to mass migrations, considering the fact from which countries and cultures migrants come and the fact in which countries and cultures they settle temporarily or permanently.

Today, the most current is the migrant (refugee) crisis, where a large part of the population is fleeing from their countries due to war events in them, religious, national and racial hatred, due to natural and elemental disasters, in order to ensure existence for themselves and their families and the like. Thus, there is an increasing occurrence of illegal migration and people smuggling. Human smuggling is rarely qualified as a major criminal offence to the point that it is even considered to be a good deed - helping people in need.

Yet, there are cases when war criminals flee to another country trying to evade justice, or when the members of criminal organizations do so in order to pursue their criminal activities elsewhere. They join the flows of refugees as ordinary migrants and try secretly, without ID or travel documents, to cross the borders of transit and destination countries. During the course of their journey they become the targets of human smugglers and traffickers which represent a global problem and a global threat since they may "attack" anyone anywhere. As *people smuggling* has continued to *grow*, however, smuggling rings are becoming far more extensive and organized both in developed and developing countries. The first group of countries effected by smuggling of human beings are the countries of their origin, the second group are the transit countries and finally, the third group are the countries of final destination, highly developed countries, attractive to refugees as a result of good employment prospects and high living standard. Given the fact that all participants in human smuggling benefit from this criminal act, it is unlikely that the offenders will be easily discovered and punished.

Considering that everyone finds some interest in such criminal activities, there is little probability of detection of this criminal act, and therefore of punishment of their perpetrators. In order to prevent human smuggling and suppress human trafficking, it is necessary to introduce a stronger level of protection and control of the state border with mandatory police cooperation of the bordering states. It is also necessary to work on strengthening cooperation at the national, regional, international and global level.

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Драган Т. БАТАВЕЉИЋ

Ванда Б. БОЖИЋ

САВРЕМЕНА МИГРАНТСКА КРИЗА СА ПОСЕБНИМ ОСВРТОМ НА ПОШТОВАЊЕ УСТАВНИХ ПРАВА ГРАЂАНА ЗЕМАЉА УСЕЉЕЊА

РЕЗИМЕ

Савремена мигрантска (избегличка) криза започета још 2010. године у државама Северне Африке и Блиског Истока никако није случајна, већ веома добро плански осмишљена и одрађена сеоба народа. Овим планом полако долази до формирања једног сасвим новог светског поретка на начин да се разара досадашњи национални, а ствара један сасвим нови ограничени суверенитет. Десуверенизација националних држава постала је пошаст модерног доба. Типичан пример је Европска унија која је, у доба савремене мигрантске кризе, пред себе ставила велик изазов и задатак, да очува национални идентитет члани својих држава чланица. Аутори су у раду изложили правни и институционални оквир за заштиту основних људских права миграната.

Рад садржи посебан осврт на поштовање уставних права грађана земаља усељења у доба мигрантске кризе. Савремена мигрантска криза довела је до енормног пораста кријумчарења људи, али и утицала на пораст трговине људима. Аутори у раду указују и на дистинкцију између кријумчарења људи као кривичног дела против јавног реда и мира и трговине људима као кривичног дела против човечности и других добара заштићених међународним правом. У закључним разматрањима указано је на нужност поштовања међународних докумената, на подстицање националне, регионалне и глобалне сарадње, као и на јавну осуду дискриминације и говора мржње.

Кључне речи: мигрантска криза, десуверенизација, сеоба народа, кријумчарење миграната, заштита људских права.