

Legal Treatment of the Issue of Migration Processes

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Abstract

Migration, as a sociological phenomenon, also requires legal regulation, both national and international, and today, for this reason, there are a number of international conventions that regulate migration issues. During socio-economic formations, migratory movements have never been spontaneous processes, but they have been prompted by a series of factors, such as: economic security, high unemployment, poverty, violation of human rights, persecution due to political beliefs, discrimination, totalitarian government, armed conflicts, religious conflicts, etc. Migration can be internal and international; the same are distinguished among themselves according to the criteria of territory and state borders. The state territory and the borders of a state that is different from other states, is regulated by international legislation and international law. Regardless of whether we are talking about countries of origin or countries of transit, today all countries face the challenges of migration. Even the Republic of North Macedonia as a transit country has been affected by this global phenomenon, also because of its geographical position which is located on the Balkan-Western route, which is a transit route for entering European countries. Migrants who use this route mainly flee from the wars taking place in the Middle East, who first stop in Turkey or Greece, and then in various ways use the territory of the Republic of North Macedonia as a transit to Serbia or even Albania to pass in the countries of the European Union.

Keywords: migration, economic, social, political factors, poverty.

JEL Classification: K14, K33

1. Introductory considerations

Migration means changing one's usual place of residence to another place of residence (municipality, region, state), or moving from one place of residence to another place of residence, respectively: another place of residence, another region or state.²

Migration is the challenge of almost all countries in the coverage as well as the extraction of representative statistical data for international migration where, as an issue, it is discussed at the highest levels such as scientific, research, professional as well as political issues³. Until data on immigration of a person from another country are more representative than those of emigration. This is the determining factor that causes difficulties in obtaining the real statistical data on the number of international migration.⁴

Migration, in addition to being a sociobiological phenomenon also requires legal regulation, both national and international, and today, for this reason, there are a several number of international conventions that regulates the issue of migration.

Migrations represent the movement of the population from one territory and can be of several types such as temporal migrations, seasonal migrations, internal migrations, or migrations abroad.⁵ The reasons for the movement of the population from their country of origin are many and it is due to the lack of opportunities, due to the totalitarian systems of the states, political conflicts, war, etc.

The German authors Schwind, Kaiser, Goppinger in their criminological studies talk about the criminality of foreigners and a part of the increase of some criminal actions, they describe to them and the process of population migration from one country to another.⁶

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² Kosovo Statistics Agency - Kosovar Migration, April 2014.

³ See Ivaylo Markov, (2013) *Migration, remittances and socio-cultural dynamics: the case of Albanians from the Republic of Macedonia*, Southeast European and Black Sea Studies, 13:2, pp. 245-264, DOI: 10.1080/14683857.2013.802176.

⁴ Ibid. According to the definitions and standards on international migration: a person is an immigrant if he/she has left his/her country of birth in order to settle permanently in another country regardless of whether he/she has any special status in the country in which he immigrated. The person settled in the country that has migrated (settled) is a resident person of that country. The country where the person lives, that is, the country where he/she has a place to live, where he/she normally spends the daily rest period. Temporary trips outside that country for: holidays, visiting friends or relatives, for business, medical treatment or religious pilgrimage, do not change the person's habitual residence.

⁵ Ismail Zejneli, *Juvenile Delinquency*, Tetovo, 2018, p. 132.

⁶ Ragip Halili, *Criminology*, Pristina, 2016, p. 244.

In the world, people have known periods of migration from their countries to third countries, where unfortunately from some countries we have massive migrations within very short periods. Criminology is interested in studying the connections that exist between criminality and clandestine immigration and criminality and permanent immigration and many authors argue that criminality is higher among clandestines and that the problem is different with permanent immigrants who have entered the other country with regular documents and are not hiding from authorities.⁷

According to the press in Western Europe there are about 20 million foreigners with residence permits and more than 10 million others who stay without permit. In Germany, which has more than 80 million inhabitants, foreign nationals make up 5.9% of the total population. In Sweden, criminological research on the criminal actions of refugees, asylum seekers and foreign workers concluded that Swedes commit 6 crimes per 1.000 inhabitants, while foreigners depending on the country they come from, commit 10 to 15 crimes per 1000 inhabitants.⁸

In nowadays we can easily notice that there is a flood of migration of young people and citizens from different countries.⁹

2. Legal treatment of the issue of migration processes in North Macedonia

Today, regardless of whether we are talking about countries of origin or transit countries, all countries face the challenges of migration¹⁰. Even the Republic of North Macedonia as a transit country has been affected by this global phenomenon, also because of its geographical position which is located on the Balkan- Western route, which is a transit route for entering European countries. Migrants who use this route mainly flee from the wars taking place in the Middle East, who first stop in Turkey or Greece, and then in various ways use the territory of the Republic of North Macedonia as a transit to Serbia or even Albania to pass in the countries of European Union.

After the independence of the Republic of North Macedonia the security of the state border was done by a special border unit of the Army of the Republic of North Macedonia. Considering the Euro-Atlantic aspirations of our country, it was necessary to abandon the previous system of securing the state border that is to apply the European system of integrated management of borders.¹¹ With the establishment of the Border Police at all levels: strategic, operational and local, as well as with the involvement of other ministries and agencies in the Integrated Border Management System, the Republic of Macedonia acquired a modern segment of national security capable of answered all the border security challenges of the Republic of Macedonia, but also security and the fight against cross-border crime with the countries of the region and the European Union.¹²

Police officers from the Police Station for Border Control - have discovered 52 illegal migrants with origins from African and Asian countries", report from the Police, announcing that they were handed over to the Transit Center in Tabanovce, against whom criminal charges were announced. Four of these migrants, who came from Pakistan, were immediately arrested, as illegal substances and cold weapons were found with them, while they are suspected of having attacked the rest of the group.¹³

Based on the final findings of Europol a complex and multinational network of migrant has developed around Europe's unprecedented migration crisis, generating billions of euros for the

⁷ Vasilka Hysi, *Introduction in Criminology and Penology*, Tirana, 2002, p. 81.

⁸ Ragip Halili, *op. cit.*, 2016, p. 244.

⁹ Ibid.

¹⁰ Today, the much-discussed biometric identification leads to "social sorting", i.e. biased treatment of certain groups, especially marginalised groups such as asylum seekers and illegal migrants. This is particularly problematic in the context of expulsion processes of foreigners, where identification plays a crucial role. Broeders, D., (2011) *A European 'Border' Surveillance System Under Construction*. In *Migration and the New Technological Borders in Europe*, edited by H. Dijstelbloem, and A. Meijer, 40–67. Basingstoke: Palgrave Macmillan; and Mihaela Nedelcu & Ibrahim Soysüren (2022) *Precarious migrants, migration regimes and digital technologies: the empowerment-control nexus*, *Journal of Ethnic and Migration Studies*, 48:8, pp. 1821-1837, DOI: 10.1080/1369183X.2020.1796263.

¹¹ <https://mvr.gov.mk/default> - Republic of North Macedonia - Ministry of Internal Affairs.

¹² Ibid.

¹³ <https://portalb.mk/762967-policia-kapi-52-migrante-qe-po-qendronin-ilegalisht-ne-maqedonine-e-veriut/>, consulted on 10.03.2023.

criminal groups involved. In 2014, the number of irregular migrants arriving in the EU increased, reaching more than one million migrants the following year. According to Europol this trend of rapidly increasing numbers will continue.¹⁴

This development has had a profound impact on Europe's criminal landscape, with criminal networks significantly increasing their involvement in migrant smuggling. More than 90% of migrants are traveling to the EU using facilitation services, in most of the cases these services were and are provided by criminal groups. Criminal networks exploit the desperation and vulnerability of migrants seeking to escape armed conflict, persecution and deprivation. They offer a wide range of facilitation services such as transport, accommodation and fraudulent documents at exorbitant prices. In many cases, migrants are forced to pay for these services through illegal work. Europol expects this exploitation to further increase in the coming years.¹⁵

According to Article 13 of the Universal Declaration of Human Rights of 1948: "Everyone has the right to freedom of movement and residence within the borders of any country and that everyone has the right to leave any country, including his own, as and return to his country".

So also article 27 of the Constitution of the Republic of North Macedonia specifies that Every citizen of the Republic of North Macedonia has the right to move freely in the territory of the Republic and freely choose his place of residence, as well as every citizen has the right to leave the territory of the Republic and return to the Republic, while the realization of these rights may be limited by law, only in cases where this is necessary for the purpose of protecting the security of the Republic, the development of criminal proceedings or the protection of people's health.

The legal regulation of the issue of migration processes is also regulated by International Conventions, such as:

- International convention for the protection of the rights of all migrant workers and members of their families,
- International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families,
- Convention on migration for reasons of employment,
- Convention on Migrant Workers,
- United Nations Convention on the Status of Refugees,
- Convention on the Status of Stateless Persons, and the Convention on the Reduction of Statelessness,

In the Republic of Macedonia, in article 47, paragraph 2, of the Law on Foreigners, it is stated: "The foreigner who is a citizen of the state with which the Republic of Macedonia has established a visa-free regime, if he meets the conditions for entry defined by this law, may enter and stay in the Republic of Macedonia for a maximum of three months during each six-month period, counting from the day of the foreigner's first entry." The foreigner can enter the Republic of Macedonia, if:¹⁶

- has a valid and acceptable travel document,
- possesses a valid visa, if necessary,
- has means of maintenance both during the period of stay and during the return to the country from which he comes or for travel to a third country in which he is certain that he will be accepted, or he will have the opportunity to legally acquire them tools, attach, if necessary, documents justifying the purpose and circumstances of the intended stay in the Republic of Macedonia and travel insurance documents,
- has not been deported from the Republic of Macedonia and for whom there is no valid entry ban,
- does not pose a risk to public order, national security, public health or international relations

¹⁴ <https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/facilitation-of-illegal-immigration>, consulted on 10.03.2023. See Lisa Marie Borrelli & Anna Wyss, (2022) *Informing for the sake of it: legal intricacies, acceleration and suspicion in the German and Swiss migration regimes*, Citizenship Studies, 26:7, 944-960, DOI: 10.1080/13621025.2022.2137941.

¹⁵ Ibid.

¹⁶ Article 47 of the Law on foreigners, of the Republic of Macedonia, 2006.

in the Republic of Macedonia.¹⁷

Whereas in article 47, paragraph 1, it defines the stay of up to three months, where it says that "with a stay of up to three months in the sense of this law, the stay of the foreigner with or without a visa is counted, whether with this law or with a ratified agreement of travel has not been specified otherwise."¹⁸

Table 1. Emigrated citizens of the Republic of Macedonia abroad, by municipalities¹⁹

Municipality of previous place of residence	Total	Slovenija	Serbia	Croatia	Bulgaria	Turkey	Other
Republic of Macedonia	141	3	2	3	4	2	127
Skopje	1	-	-	-	-	-	1
Shuto Orizar	1	-	-	-	-	-	-
Bogovinje	1	-	-	-	-	-	1
Brvenica	1	-	-	-	-	-	1
Valandovo	1	-	-	1	-	-	-
Vrapcishte	4	2	1	1	-	-	-
Gostivar	39	-	-	1	-	2	36
Delchevo	23	1	-	-	2	-	20
Zhelino	2	-	-	-	-	-	2
Jegunovce	24	-	-	-	-	-	24
Kriva Palanka	3	-	-	-	-	-	3
Mavrovo and Rostusha	3	-	-	-	-	-	3
Makedonska Kamenica	6	-	-	-	1	-	5
Tearce	12	-	-	-	-	-	12
Tetovo	21	-	1	-	1	-	19

According to the municipalities, the largest number of emigrants was in the municipalities: Gostivar, Jegunovce, Delchevo, Tetovo, while the smallest was mainly observed in small municipalities such as: Brvenica, Valandovo, Bogovinje, etc.²⁰

Table 2. Emigrated citizens of the Republic of Macedonia abroad, by educational attainment, by municipalities²¹

Municipality of previous place of residence	Total	without school	primary education (1-4 grade and 5-7 grade primary school)	Primary school	secondary school	Higher school	University	Master's degree	Doctorate	unknown
Republic of Macedonia	141	6	3	19	35	1	9	-	9	68
Skopje	1	-	-	-	-	-	1	-	-	-

¹⁷ Ibid.

¹⁸ Law on Foreigners, Article 47.

¹⁹ Statistical review 2.4.18.06/897.

²⁰ See details in Ivaylo Markov, (2013) *Migration, remittances and socio-cultural dynamics: the case of Albanians from the Republic of Macedonia*, Southeast European and Black Sea Studies, 13:2, 245-264, DOI: 10.1080/14683857.2013.802176; and Andrew Rossos. 2008. *Macedonia and the Macedonians: A history*, Stanford, CA: Hoover Institution Press, pp. 2-37.

²¹ Statistical review 2.4.18.06/897.

Shuto Orizar	1	-	-	-	-	-	-	-	-	-
Bogovinje	1	-	-	-	-	-	-	-	-	-
Brvenica	1	-	-	-	-	-	-	-	-	1
Valandovo	1	-	-	-	-	-	-	-	-	1
Vrapcishte	4	-	-	-	4	-	1	-	-	-
Gostivar	39	2	1	-	10	16	-	-	-	-
Delchevo	23	3	-	-	2	12	-	5	-	8
Zhelino	2	-	-	-	-	-	-	-	-	1
Jegunovce	24	-	-	-	-	-	-	-	-	24
Kriva Palanka	3	-	1	-	2	-	-	-	-	-
Mavrovo and Rostusha	3	1	1	-	-	-	1	-	-	-
Makedonska Kamenica	6	-	-	-	-	6	-	-	-	-
Taerce	12	-	-	-	-	-	-	-	-	12
Tetovo	21	-	-	-	1	-	-	-	-	20

Whereas, according to the Law on Foreigners of the Republic of Kosovo, n. 3, parag.1.1-Foreigner - any natural person who is not a citizen of the Republic of Kosovo, whereas, refugee - the person who, due to well-founded fear to be persecuted for reasons of race, religion, nationality, political opinion or belonging to a certain social group, is outside the country of citizenship and does not have the opportunity or because of such fear does not want to benefit from the protection of that country, or the stateless person who, being outside the place of previous regular residence for the same reasons as mentioned above, does not have the opportunity, or because of such fear, does not want to return to that place (article 3, paragraph 1. 11.)²².

According to the data of the 2011 population census in the Republic of Kosovo, 35% of the Kosovar population had emigrated to; Germany, then Switzerland 23%, Italy 7% and in other countries the situation was as follows: emigration by country (10 countries) expressed in percentage.

Table 3. Emigration according to 10 countries expressed in percentage²³

Ten (10) major states	%
Germany	32,25
Swiss	22,94
Italy	7,26
Austria	5,61
Sweden	5,14
USA	3,53
France	3,25

²² For particular aspects see Cristina Elena Popa Tache, *International investment protection in front of the states role in crisis times to managing disputes*, „Juridical Tribune - Tribuna Juridică”, volume 10, issue 3, December 2020, pp. 455-465.

²³ Kosova Migration, 2011. For other place of the world with the same issues see Paul Statham, Sarah Scuzzarello, Sirijit Sunanta & Alexander Trupp, (2020) *Globalising Thailand through gendered 'both-ways' migration pathways with 'the West': cross-border connections between people, states, and places*, Journal of Ethnic and Migration Studies, 46:8, pp. 1513-1542, DOI: 10.1080/1369183X.2020.1711567.

England	2,79
Belgium	2,07
Slovenia	1,78
others	10,38

3. Conclusion

Based on local and international statistical data, the largest number of people from countries emerging from various crises have emigrated to Germany, Switzerland, the United States, Austria, Italy, etc.

Emigration in some countries such as Switzerland and Germany is related to the eased conditions for staying in these countries, but also related to the first immigrants who settled in those countries before 1970. Until the majority of migrants are dominant in Germany and in Switzerland, Bulgaria, Slovakia, Croatia etc. are also popular countries in recent years²⁴.

Regarding the data of immigrants according to school preparation while by gender, the statistical reports of countries in the region show that, for example, 56.67% of men and 43.33% of women emigrated from Kosovo, while in the Republic of North Macedonia.

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