

THE CLOSE RELEVANCE OF INTERNATIONAL MIGRATION AS A LEGAL PROCESS WITH THE CRIMINAL ACT OF MIGRANT SMUGGLING

Ersin Sulejmani

International Vision University, Republic of North Macedonia, ersinsulejmani1@gmail.com

Ismail Zejneli

South East European University, Republic of North Macedonia, i.zejneli@see.edu.mk

Abstract: Migration as a phenomenon of the movement of persons from one country to another has existed since ancient times and it is said to be as old as the history of mankind itself. This natural occurrence of humans has affected almost every country in the world, and has been done throughout history for many reasons, the most significant being migration of people in order to find primary and better living conditions. Even today, many world countries continue to be affected by this phenomenon in various forms and causes that move people to move to other countries and is a trend that has grown rapidly in recent years. Migration as a phenomenon relates to the movement of a person or persons from their permanent residence to a new place of residence for various reasons which may be within the boundaries of a particular state or migration outside the recognized state borders, known as international migration. International migration in itself involves the movement of a person or persons from one's own country to other countries which may be neighboring countries or even beyond, crossing many states for various reasons. International migration is based on the fact that at least one state border has to be crossed and in some cases even many state borders. It is a very difficult move where migrants face many problems, they are tired of long journeys, large financial spending during the migration process, long wait times at borders in severe climatic conditions as well as various administrative barriers and border controls. During the process of international migration there are three types of countries that have different positions where the migrants pass and that is the country of origin of the migration, transit countries are the countries that the migrants must pass through and finally the destination country which is also the main goal of migrants. To overcome these barriers, migrants seek solutions to escape various problems along the way and thus initiate first contact with organized crime groups, especially smugglers, which assist migrants in exchange for financial payments to overcome barriers and transfer them securely towards destination countries. So, smuggling of migrants is an activity that helps and facilitates the illegal entry of migrants into the territory of a foreign country (transit or destination country). Migrant smuggling is tied to the preliminary agreement between the migrant and the smuggler which is realized with the desire and consent of both parties, i.e. the migrant and smuggler have agreed upon an amount to be paid. So, we do not have coercion, intimidation, or different kinds of mistreatment by the smugglers, on the contrary, there is an agreement between the two parties. The risk of migrant victimization by smugglers often occurs when the amounts of money to be paid to smugglers are often so large that migrants cannot pay and thus smugglers offer that upon arrival in the countries of destination they will pay by providing work to the smuggling side, which also signifies the first step of migrant victimization in the criminal offense of trafficking in human beings. This is due to the fact that most criminal groups and smugglers also engage in trafficking in human beings, as one of the most serious criminal offenses, where victims are exploited for various purposes in order to obtain large sums of money. The risk of moving from migrant smuggling to the offense of trafficking in human beings is very high as the smugglers have total control over the migrants up until the country of destination therefore the migrants can become victims in this serious criminal offense. The dependency that is formed between the migrants and the smugglers is such that the migrants trust the smugglers maximally, they even accept offers after arriving in the country of destination and here is the point of transfer to the act of trafficking in human beings. However, trafficking in human beings is a much more serious offense because traffickers use violence, fraud, abuse of victim status, and exploit them in various forms, most often prostitution and forced labor in order to benefit from the victims financially for a longer period of time.

Keywords: Migration, international migration, smuggling of migrants, migrants, smugglers.

1. INTRODUCTION

The phenomenon of migration since ancient times to the present day has affected almost every continent and world state in different shapes, dynamics, quantities and volumes over different periods of time in history. However, in recent years, especially the impact of the most sophisticated technological developments, the impact of driving factors, or better to say the impact of globalization, has made the phenomenon of migration movements in recent years to become a global phenomenon and challenge. global. In ancient times, the phenomenon of migration has been the result of local or intra-state wars, invasions, oppressions of various regimes, severe weather conditions and other reasons for survival. Today the reasons for the migration of people that dominate on the world level in addition

to the different wars that include international wars, are economic reasons, the non-quality of life, political conflicts, poor working conditions that affect the "brain drain" of the intellectual class etc. If this migration trend continues to grow then it will affect migration for the purpose of family reunification. The last few years in the so-called "modern world" have created and enabled people many facilities and advancements in many fields such as the fields of technology and social communication, especially social networks and the Internet, as well as the transport of goods and people around the world, which results in migration being significantly larger than before. Namely, the flow of international migrants in the period 1990-2000 increased by 1.2% per year and from 2000 to 2013 by 3.6%.¹³⁹ Therefore, the definition of migration is a complex issue because migration, especially international migration, is a very dynamic, mixed and large-scale phenomenon and is in constant motion.¹⁴⁰

Organized crime groups which, in addition to other crimes, also engage in the crime of migrant smuggling, they target migrants who are involuntarily expelled from their permanent settlements. The expelled and deported person have been exposed to many dangers,¹⁴¹ such as the risk to life and existence, and so these groups offer various relief and choices to the needs, problems, dangers and obstacles that arise during their journey by providing illegal passage through country of origin to destination countries passing through transit states many times. The state of origin is the state whose national is the person concerned.¹⁴² Transit State is any state through which the person concerned travels to the country of employment or from the state of employment to the state of origin or the country of habitual residence.

The country of destination is the state which is the destination for migratory flows (legal or illegal).¹⁴³ "According to IOM Illegal or irregular migration implies the movement of the migrant during border entry and exit of the specific states and the stay in a country contrary to the current positive laws in force of the country of origin, transit state and country of destination. According to Article 3 (b) of the Protocol against Trafficking in Migrants by Land, Air and Sea "which is an additional protocol to the" United Nations Convention against International Organized Crime "and its two additional protocols, defines the term" Illegal crossing "as a means of crossing the border without complying with the necessary requirements for lawful crossing into the host state".¹⁴⁴

2. MIGRATION AND INTERNATIONAL MIGRATION

Based on the fact that migration in general, ie emigration and immigration as well as internal and international migration have existed throughout history, it still exists today but it has changed its characteristics and is considered as a phenomenon of universal dimensions. All countries today are also confronted with the more adequate regulation and management of new forms of migration processes, but also of its international normative unification. The state of North Macedonia also has freedom of movement in its highest legal act. According to Article 27, paragraph 1 of the Constitution of the Republic of North Macedonia: "Every citizen of the Republic of Macedonia has the right to move freely on the territory of the Republic and to freely choose his or her place of residence".¹⁴⁵ On the other hand, this is also foreseen in international acts. So, by definitions and standards on international immigration: a person is an Immigrant if he/she has left his/her country of birth in order to settle permanently in another country no matter if he/she has any special status in the country in which he emigrated.¹⁴⁶

Given that migration as a process is regulated not only by national law of states but also by international acts signed and accepted by many world states, it should be noted that these migrant movements are not always lawful respecting the conditions for migration. Today, in the contemporary world, international migration is the most widespread migration which has also been massive during the history of mankind.

The term international migration means the movement of a person or group of persons from one state to another, which may be a neighboring state or a more distant state, for various reasons in the country of origin (reasons that induce or promote the individual in decision-making) and towards the country of destination or host country

¹³⁹ Resolution. "Policy on Migration of the Republic of Macedonia 2015-2020". Skopje, 2015, Pg. 1

¹⁴⁰ Öner, S.Gülfer-İlhamur. Öner, Aslı-Şirin. "Migration in the Age of Globalization". Istanbul, 2016, Pg. 13

¹⁴¹ IOM, "International Migration Law" Dictionary of Migration Terminology, Tirana, ISSN: 1995-7467, Nr.10, 1995, Pg.69

¹⁴² IOM, "International Migration Law" Dictionary of Migration Terminology, Tirana, ISSN: 1995-7467, Nr.10, 1995, Pg.68

¹⁴³ IOM, "International Migration Law" Dictionary of Migration Terminology, Tirana, ISSN: 1995-7467, Nr.10, 1995, Pg.17

¹⁴⁴ Protocol against the Smuggling of Migrants by Land, Sea and Air. Palermo/Italy, 2000, Article 3, Paragraph b)

¹⁴⁵ Constitution of the Republic of Macedonia with the Constitutional Amendments I-XXX, Skopje, 2006, Article 27, Paragraph 1

¹⁴⁶ Report. "Kosovar Migration". Pristina, 2014, Pg.18

(reasons that drive the individual into decision making). The illegality of migration processes is more pronounced during international migration when countries of destination reduce the number of migrants' admission or some countries do not even accept them and view them as a threat to their nationals in terms of integration, employment and state capacity to provide them with services that are required by law. Due to the reduction and non-acceptance of countries of destination, migrants often seek modes and remedies to enter these countries, thus activating organized crime through international criminal groups which provide solutions and carry out the act of smuggling migrants. In general, there are many social problems facing immigrants and emigrants ranging from language barriers to social isolation, emotional distress and rejection by locals of a particular state. Individuals moving from one country to another encounter various obstacles in leaving their country, moving to transit countries and entering their countries of destination. To overcome these barriers, migrant individuals on the move often contact various persons and persons who do not even know them in order to find a way out of overcoming problems on their way to their countries of destination. Thus, migrants also reach out to persons who are members of various criminal groups who, for material gain, seek migrants who need assistance in achieving their goal of settling in their countries of destination. So, besides the way of regular and lawful entry of individuals into the borders of the states, we also have irregular or illegal migration which means irregular entry or non-compliance with the period of residence for individuals who have already emigrated and with the passage of time do not leave the particular state transforming themselves into an irregular or illegal immigrants. Often this type of migration is also referred to as illegal migration, clandestine or undocumented migration. The term irregular international migration means a migrant who has entered the transit or destination country illegally or has exceeded the residence permit period in the transit or destination country.

3. THE CLOSE RELEVANCE AND TRANSFER FROM MIGRATION AS A LEGAL PROCESS INTO THE CRIMINAL ACT OF MIGRANT SMUGGLING

The close relevance and transfer of migration as a legal process in the offense of migrant smuggling is realized by the desire of migrants, especially when they have no remedies and other legal means to overcome various obstacles and barriers in their journey as a migrant to the country of destination. Thus, migration is closely linked to the offense of migrant smuggling and indirectly to organized crime. In order for migrants to reach their country of destination more easily and safely they provide large sums of money to smugglers voluntarily just to assist them to cross state borders. This marks the beginning of the victimization of migrants as victims in the criminal offense of migrant smuggling. The offense was committed intentionally when the perpetrator was aware of his/her offense and wished to have it committed (Article 13 IMC).¹⁴⁷ Ways that are used to cross a state border illegally are often mountain roads and secretly in the luggage of transport vehicles as well as through the use of forged identification documents. In general, the perpetrators of the criminal offense of migrant smuggling are persons who operate within the various criminal organizations and these organizations engage in other criminal activities as well. The most common activities of organized crime groups are: murder, robbery, organ trafficking, weapons trafficking, narcotics trafficking, gambling, blackmail, and many other criminal activities. The risk of migrant victimization by these criminal organizations is high because the assistance that migrants seek from those criminal organizations, which, after committing the smuggling of migrants, have more control over the migrants and can abuse them by involving them in all sorts of other dangerous crimes.

The globalization of some crimes has hampered the adoption of a common position on the different definitions of states for their criminality, laws and application,¹⁴⁸ and to this day we do not have a proper consolidation of international acts on this issue. The greater danger is that if migrants begin to depend on smugglers' assistance, then it could be a high risk for migrant victimization in the offense of trafficking in human beings which is a very dangerous offense against freedoms and basic human rights. Offenses against life and body are more serious than other offenses because they violate the right to live as a more precious and fundamental right, guaranteed by the constitution as well as by international acts.¹⁴⁹ As part of the activities of organized crime groups against migrants Article 418-v "Organizing a group and encouraging the commission of trafficking in persons, with minors and smuggling of migrants" of the Criminal Code of Macedonia states: "One who organizes a group, gang or other organization for the commission of offenses under sections 418-a, 418-b, 418-g and 418-d shall be punished by imprisonment of at least eight years."¹⁵⁰ Paragraph 1 of Article 418-b states: One, who by force or serious threat to attack life or body, by theft, fraud, self-interest, abuse of official position or by exploiting another's powerlessness,

¹⁴⁷ Kambovski Vllado, Zejneli Ismail, "Criminal Law General Part", Tetovo, 2018, Pg.138

¹⁴⁸ İçli, Tülin Günşen, "Criminology", Ankara, 2016, Pg.19

¹⁴⁹ Zejneli Ismail, "Minor Delinquency", Tetovo/Prishina, 2018, Pg.75

¹⁵⁰ Criminal Code (integral edited text) <https://www.pravdiko.mk/krivichen-zakonik/>, Article 418-v

illegally transfers migrants across the state border, as well as the one who does, secures or holds a travel document for such purpose, is punished by imprisonment of at least four years."¹⁵¹ On the other hand, many international acts aimed at preventing and combating smuggling of migrants are foreseen by criminal law.

Until the end of the 19th century there were no illegal immigrants because there was no legal restriction on entry to traditional immigration sites as well as in most European countries.¹⁵² According to Article 3 (b) of the Protocol against Trafficking in Migrants by Land, Air and Sea "which is an additional protocol to the" United Nations Convention against International Organized Crime "and its two additional protocols, defines the term" Illegal crossing "as crossing the border without complying with the necessary requirements for lawful crossing into the host state".¹⁵³

Therefore, in view of the consequences that may arise from the criminal offense of migrant smuggling, every state and society should contribute to combating this negative phenomenon. So, every society reacts to criminality in an organized and preventive and repressive sense.¹⁵⁴

4. CONCLUSION

As has been seen above, migration processes in general in recent years have seen a huge increase which continues to this day. States through their legal systems and various international organizations need to have a more serious and professional approach in this regard in order to prevent various deviations of migrants during their journey. Migrants in practice are more likely to be encountered in irregular migration, personal and group illegal migration, and their passage into the criminal offense of migrant smuggling and the high risk of transfer to the offense of trafficking in human beings. From all this we can conclude that given that migration processes are on the rise, especially international migration, more rigorous and professional measures must be taken within the particular country, operational measures between the countries of the region and international measures as well. Illegal migration and migrant smuggling cannot be prevented and combated only by preventive measures but adequate and permanent repressive measures must be applied to the perpetrators of this criminal offense, not only within a specific state but also by regional and international cooperation of the police, state intelligence, border police through the exchange of information and other institutions, taking joint measures, cooperation with international police, namely, interpol and europol.

For non-victimization of migrants or transfer from legal migration to the offense of migrant smuggling, controls should be increased at border crossings to prevent eventual victimization of migrants which if not prevented as a last step, smugglers may victimize migrants in an even more serious crime called "trafficking in human beings" as well. Preventive measures against migrants include holding seminars, lectures in various institutions at the state level, advertising the dangers of this phenomenon through social networks and media, giving adequate advice to the population through panels and conferences, etc. It is also important to take action against people who use the Internet, especially social media for various advertising, especially jobs in economically developed European countries for the employment of young people. In many states people are deceived through these so-called "Employment Agencies" which forge documents only to benefit financially from potential clients.

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¹⁵¹ Criminal Code (integral edited text) <https://www.pravdiko.mk/krivichen-zakonik/>, Article 418-b, Paragraph 1

¹⁵² Mesić, Milan. "International Migrations", Flows and theories. Zagreb, 2002, Pg.120

¹⁵³ Protocol against the Smuggling of Migrants by Land, Sea and Air. Palermo/Italy, 2000, Article 3, Paragraph b)

¹⁵⁴ Masleša, Ramo. Bisić Munib. "Fundamentals of Security". Sarajevo, 2007, Pg. 155