

The impact of EU decision-making in managing the migration crisis in Western Balkans, a social and legal approach

OLTA QEJVANI

ELISABETA BAJRAMI OLLOGU

ABSTRACT

This paper addresses recent efforts of Western Balkan countries in managing the increasing waves of migration, in accordance with EU institutional policies and mechanisms. When it comes to administration or management, migration can be with no doubt a challenge for both, European and candidate countries. In this regard, most of Western Balkans countries aiming the membership continuously make efforts to harmonize internal or regional policies with those of EU. On the other hand, European Union has developed different practices and decision-making initiatives to manage the situation. These decisions have also affected the region. Recently, most of Balkan people migrate towards EU countries. The way how European practices are facing legal and illegal migration has imposed Balkan reality to undertake specific approaches on finding the best methods to handle the migration situation and at the same time establishing and reaching out the standards of the road towards EU integration. This paper brings some insights on the implementation and compliance of candidate states with European migration policy as part of the *acquis communautaire*. It aims to analyse the political, legislative, and social impact of EU decision making on migration in the region. It provides an analysis of recent policies in two perspectives, legal and social ones, with the aim to explain on one hand changes on legislation and on the other to analyse social consequences of such policies undertaken. Specifically, this paper attempts to answer to the following research questions: how *public institutions* of Balkan Countries are developing and implementing the migration policy following EU practices; which are the positive and negative effects of EU practices on *managing migration* in the region; what can be *improved in EU legislation and institutional mechanisms* for migration policy, especially towards the Balkan region situation.

KEYWORDS: *Migration, European decision making, Western Balkans, Public Administration*

1. Introduction

Migrants crisis is the nowadays reality of EU, a phenomenon which must be properly treated. Balkan countries are one of the regions that represent the highest numbers of migrants towards EU boundaries (legal and illegal migration). Beyond a social or political phenomenon, EU consist on a whole public administration mechanism that plays a concrete role in managing migration and on the other hand it is expected to produce real solutions, as well. When it comes to manage the migration crisis to Balkan countries, EU decision making is analysed on a specific context, because most of the Balkan countries are trying to become members of EU. In this way, the new legal or political approaches must be wisely improved and done. Once The New York Times wrote that *"...when migrants are going towards EU boundaries, the only thing that Mogherini does is crying"*. Even though it is an expression coming from journalism field, in the optical of researchers it makes us to analyse, identify which is the attitude of EU public administration in managing migration crisis in Western Balkans and other countries as well. Combining the social perspective with the legislative one, gives us the opportunity to make a concrete identification of problems and challenges towards migration as a social and institutional phenomenon which needs particular attention from both approaches.

Methodology

From a methodological aspect, this paper is mainly based on literature review with a particular focus in the reading of public documents with the aim to identify the attitude of EU public administration on managing the migration crisis and explore its effects in Western Balkans. Comparative methods will be used to offer an in-depth analysis of EU policy making and Western Balkans "activation" in managing the crisis in accordance with these policies. We can consider as one of the limitations of this paper the ECJ jurisprudence for migration, which is still a vague field of study even in the framework of migration issues in European Union. Through some ECJ cases we aimed to find some alternatives and the way how Western Balkans can refer to the solution of similar situations, presented in the cases of ECJ in order to share best practices.

2. Migration and Social Policy - institutional challenges

Most of the existent research on international migration tends to generally focus on the economic, political and cultural implications of migration, and not explaining concrete links between migration and governments' mechanisms to give solution to migrant's social problems or fulfil their needs. In this regard, less is known about the relationship between migration and social policy, particularly in developing countries as are considered most of Western Balkan countries¹⁾. Before analysing the relationship between migration and social policy, it is important firstly to emphasize

¹⁾ See, list of developing countries 2019, <http://worldpopulationreview.com/countries/developing-countries/>

that the Western Balkans are very diverse as regards migration issues, despite their similarities in economic and political development. They share common challenges (in the context of the EU enlargement process) and problems in managing the migration crisis, and same typology of dominant migration, which is international migration. During a decade (from 2008-2018), a total of 2, 9799,766 people left the Western Balkans. In the same period, 258,020 people from North Macedonia left the country and for year 2018, around 33,337 people²⁾. Over the last two decades, all these countries have been experiencing high rates of emigration, and these waves of population leaving the countries have always been oriented towards Western developed countries. In the last recent years, besides emigration, some of them have been in challenge to manage a refugee crisis as well, (i.e. Serbia; Republic of North Macedonia; Croatia, BIH³⁾ etc). So, even though prevailing typology of migration from Western Balkans is nowadays emigration, in the last years some of the countries, such as Serbia, North Macedonia, and Croatia are facing a refugee crisis and must deal with it as well. On one hand the migration crisis (young people leaving the countries for better life conditions) and on the other hand the refugee crisis⁴⁾ (people migrating for other reasons – people who have been forced to flee their country because of persecution, war or violence).

In 2018, Bosnia and Herzegovina became the preferred transit country for migration flows in the Western Balkans with over 24,000 arrivals, which is twenty times more than the year before. In order to cope with the high number of arrivals, new reception facilities were put in place with the financial support of the Council of Europe Development Bank (CEB) and the European Union. An estimated 4,000-5,000 people are still in the country waiting for an opportunity to cross the border into Croatia. Croatia, responsible for the European Union external border, has also registered an increase in arrivals with a total of over 7,500 people registered in 2018, from which only 352 asylum seekers remained in the country. In 2018, Croatia has focused on policies and measures to prevent unauthorized crossing of the border, and to deter access to its territory. The implementation of these policies and measures has coincided with the emergence of reports of pushbacks⁵⁾.

This session of the paper aims to explain the links between migration and welfare state and to explore to what extent migrants attempt to influence social policy and service provisioning. Does the Welfare state respond to migrants needs? Which are main challenges for regional governments in attempt to promote welfare state? What are the organizational and political linkages that have a bearing on social policy and

²⁾ Source, EPIK – European Policy Institute of Kosovo.

³⁾ BIH – abbreviation used for Bosnia and Herzegovina.

⁴⁾ Two-thirds of all refugees worldwide come from just five countries: Syria, Afghanistan, South Sudan, Myanmar and Somalia. – according to UN <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>

⁵⁾ Council of Europe, 24 April 2019 - The report is based on fact-finding missions to Bosnia and Herzegovina and to Croatia on 24-27 July and 26-30 November 2018. <https://www.coe.int/en/web/portal/-/two-western-balkan-countries-still-struggle-with-migration-flows-but-face-different-challenges>

service provisioning? Social policy as a mechanism used from governments to resolve social problems and fulfil social needs, has shown an increasing contribution in the last years but despite that, cannot resolve newly escalating social problems such as external migration (which occurs when a person or group of people immigrate to a country from another country and which is a very common pattern of human migration). “Welfare states in particular can only function properly when the dividing line between insiders and outsiders is crystal clear, because anyone who contributes to one is also a potential beneficiary, and *vice versa*. Redistributive measures always take place from those who are better off to those who are less well-off within a given society and within one and the same system” as Entzinger stated in 2007. One of main reasons, as above mentioned in this session of the paper, for this high rate of external migration from western Balkan countries is directly related to poverty and other living conditions which do not fit with new emerging people’s needs. This is a typical form of labour migration. Due to high rates of unemployment and poverty, massive groups leave these countries with the aim to labour in some other developed countries. Latest policy analyses regarding migration movements from and to countries belonging to western Balkans, such as Serbia, Albania, Bosnia and Herzegovina, Croatia, Montenegro show that most of their governments are engaged in developing migration policies without even having a clear definition of these policies. Migration policy is often used to describe a government’s statements of what it intends to do or not do (including laws, regulations, decisions or orders) in regards to the selection, admission, settlement and deportation of foreign citizens residing in the country (Bjerre et al ., 2015). Migration policies may cover various areas including the labour market, integration, and humanitarian/asylum, family, co-ethnic, and irregular migration. Several migration policy indices exist, and more are under development. For most of the governments of these countries, when it comes to most evident challenges for policy makers at the national and regional levels, it might be emphasized they include difficulties on finding practical ways of integrating migrants into development processes, but also more entrenched issues related to the way social policy interacts with citizenship and the diverse forms of migration. There are a lot of difficulties which explain the weakness of the institutions in developing successfully required interventions, policies or programs. It may be argued that there is a lack of knowledge and reliable information on migration trends and on the latent migration propensity from the Western Balkan countries.

3. Social services meeting migrant's needs

Social policy and social service provisioning are mechanisms used to meet needs of individuals/groups in social risk. In terms of social policy as a government’s intervention to provide social services to migrants, three most important pillars need to be highlighted: for western Balkans region migration policies tend to decrease “brain drain” which is considered a central problem; secondly there are services offered for “non-citizens” or migrants coming in the region as countries of

destination – the provision of welfare to regular/irregular migrants. The general problem is that those “non labour categories” are seen as obstacles to welfare state and only few services are offered; thirdly, there are services provided for refugees. Almost in all region welfare sectors are diversified and they include public, private, civil, and informal ways of welfare provision⁶⁾. A central element in meeting migrant’s economic and social human rights is the access to quality public services and social protection. Yet migrant in irregular status are often denied such services. There should be “firewalls” between agencies that deliver public services and enforcement agencies, so that migrants can access services without fear. Because public policies tend to give low priority to targeting migrant populations, migrant associations, trade unions and other relevant CSOs have an important role to play in providing crucial services and political advocacy for migrants to put their issues on the map. When it comes to Public sector engagement in managing the crisis, we have to keep in mind that in most of the countries, there are some typical institutions engaged in the refugee crisis management, such as official commissariats (example: The Commissariat for Refugees and Migration of the Republic of Serbia Established a total of 17 transit, reception and asylum centres throughout the country where about 87% of migrants was accommodated in the Commissariat’s centres of the total capacity of 6,000 beds. In general, due to similarities regional countries have, typical local institutions engaged refer to Centres of Social Work, shelters for unaccompanied children and shelters for elderly people etc. On the other hand, civil society’s assistance has been notably evident. In North Macedonia, UNICEF has been in front of the refugee crisis management by providing continually needed supplies, establish child friendly spaces to provide psychosocial support and access to learning when education is interrupted. They do also provide technical assistance to strengthen support and protection for unaccompanied and children separated from families, as well as to strengthen the capacity of front line workers, including health workers, social workers and NGO staff so that the best interest of children always comes first. Civil society has been playing a major role in advocating and raising awareness to ensure about refugee needs. Legal support and advocacy have been used as tools necessary for migrants to achieve their legal rights. Other services include psychosocial support, child protection, educational support, etc which are mainly given by civil stakeholders.

4. EU law obstacles to realize the re-integration of migrants

Among all the efforts that EU has made to legally manage migration crisis, there is still a lack of specific regulations on migration. Some of EU leaders used the concept of “*transnationality*” in order to keep alive the scope of collaboration between countries with each other to handle migration as a social problem. Transnationality is a term provided in Lisbon Treaty, but it does not have any legal impacts or restrictions if not

⁶⁾ Public sector - which comprises services provided by the state; private sector - services are provided by the market. Social services of the civil sector are those provided by non-profit organizations. According to Čekerevac, A.; Perišić, N.; Tanasijević, J., 2018, *Social Services for Migrants: The Case of Serbia*, p. 104.

being realized. So, in practical terms, there is no legal penalty if countries with each other do not collaborate in the terms of “transnationality”. But, on the other hand, EU has been established and is still functioning, because there is the free will of countries to stay and cooperate under this umbrella. This means that not everything needs to be measured on legal terms and under penalty logic. For sure, the legal panorama is an emerging instrument to properly find the solutions related to migration crisis. EU needs to keep alive the principle of free movement of people as a concrete reality of its arena. We recommend that transnationality can be used as a principle to be embraced on the other legal provisions that countries and EU institutions do. Maybe, what has happened in EU recently, has demonstrated a strong need to provide legal restrictions if countries do not apply “transnational practices”. *On the other hand, does it make sense if we keep the collaboration in EU through a penalty system?* There are three elements to be taken into consideration when we analyse institutional operation of EU towards migration⁷⁾:

EU rules on the free movement of EU citizens (*Directive 2004/38; Regulation 492/2011; Regulation 1612/68; Article 20, 21 of TFEU; Article 45/1 of European Charter of Fundamental Rights*).

EU rules on the free movement from developing countries (aiming to become members of EU). “Candidate countries” are seen on a different way. We can mention here the Agreement of Schengen, which has produced many facilities on these countries. Balkan countries are part of Schengen Agreement, which has produced both facilities and conditions to be fulfilled.

EU rules on migration for those considered as third countries (not aiming to become members of EU).

Since 2014 there are more than 50 directives and regulations, specifically: (6 on asylum; 12 on legal migration; 14 on boarders and visa; 16 on irregular migration). Even though the main focus of public opinion refers to irregular migration, in order to generally analyse the work and the impact of EU institutions on this issue, we have to pay attention to the three elements given above. Legal obstacles that do not easily let migrants to integrate themselves in EU arena are as following:

- the lack of channels of information of EU laws and policies towards migrants;
- due to the fact that migration was a rapid phenomenon in the heart of EU, persons and staff working for migration, must be trained more and specialized to properly work regarding to migration crisis needs;
- EU stakeholders must highly put efforts on local agencies of their countries in order to provide the information to migrants and orientate them on what to do to be integrated;
- EU must “unify” its own policy goal for reintegration of migrants choosing between “returning” or “reintegrating” them. Different countries share different opinions in this regard. As it seen from the above legal panorama for EU migration, we can see that there are many EU laws that address solutions for managing migration in the region, but considering from the other side; we can see that there are a lot of lack solutions which are not provided from

⁷⁾ Based on Kees Groenendijk, *Recent developments in EU law on migration, The Legislative Patchwork and the Court's Approach*, in *European Journal on Migration and Law* 16 (2014), pp. 313-335.

EU legislation. One of the biggest forums in EU arena, held in April 2019, has identified top 10 recommendations which generally include

1. Social cohesion clause in EU/national funds that target migrants and make it mandatory to also involve people from the host community.
2. Developing multi-stakeholders' platforms at local level that can bring together local authorities, NGOs, migrants' organizations, among others, to guarantee accessible, inclusive and relevant services to migrants, regardless of their status. At this point might be emphasized that in Western Balkans (as above explained) the civil sector has been playing a major role in the crisis management.
3. Establish a structured process for consultation of NGO, local authorities and social partners in the management of legal migration.
4. Adopt a horizontal directive harmonizing admission conditions and rights for all categories of non-EU nationals that also includes equal treatment rights, intra-EU mobility and family reunification.
5. Expand extended family reunification programmes in the EU as part of complementary pathways to protection.
6. The European Commission should take steps to harmonize processes among EU countries for welcome and integration of migrants, regardless of ways of arrival, country of origin etc., with specific attention to the special needs of vulnerable groups and the critical need for specific accessible funding available in the new Multi-annual Financial Framework for civil society organizations, grassroots organizations and local authorities.
7. Strengthen cooperation among civil society and Diaspora organizations and support their effort to provide information and incentives for reintegration of migrants in the countries of origin.
8. Foster regional dialogue and platforms with a view to creating public-private partnerships for mobility.
9. Develop pilot projects in local authorities across the EU to ensure access to human rights for all, including undocumented migrants, generally aiming at supporting social cohesion.
10. Fund and support local and grassroots organizations that work with vulnerable groups to develop gender sensitive actions and policies at local/regional/national/EU level through multi-stakeholders approach⁸⁾.

...Adopt a horizontal directive harmonizing admission conditions and rights for all categories of non-EU nationals that also includes equal treatment rights, intra-EU mobility and family reunification.

We want to focus more on this recommendation. Even though we have several juridical acts that aim to bring solutions for migration crisis in EU arena, all these acts do not explicitly explain the admission conditions and other rights related to re-integration of migrants and their families. That may be referring even to the current

⁸⁾ 5th European Migration Forum, 3-4 April 2019, From global to local governance of migration: The role of local authorities and civil society in managing migration and ensuring safe and regular pathways to the EU, #EUMigrationForum.

policy of EU towards migrants, which is not consolidated and still promotes different directions of approaches.

Since 2017, the EU and its member states have criminalized NGOs' rescues at sea and imposed hefty fines on the organizations. They have denied their boats access to ports, confiscated vessels, and arrested ship captains. For instance, in June 2019, Sea Watch – an NGO led by Captain Carola Rackete – rescued more than 60 migrants off the coast of Libya. After the migrants were denied embarkation access for two weeks, several German cities indicated that they would accept them. But there was no mechanism for safe disembarkation that would allow the migrants to reach Germany. Rackete eventually defied Italy's ban by bringing the migrants to Lampedusa, invoking an obligation to do so under international law. Salvini, then in government, banned commercial and private boats from disembarkation in Italian ports. This led to a disembarkation crisis in which Italy prevented the Aquarius, an NGO vessel carrying more than 600 migrants, from entering Italian waters in August 2018. The Spanish government subsequently allowed the ship to dock in Valencia.⁹⁾ This case shows up that EU law needs immediately new provisions in order to manage migrant crisis in borders between EU countries. Delicate issues in the heart of EU should not be treated into the terms of solidarity or be treated in the national decision making of EU countries. It is highly recommended that EU must unify the policy and attitude towards migrant crisis, in order to not let sporadic mechanisms, solve the situation, but lead the whole problems of this process.

5. New approaches and perspectives from ECJ case law to manage migration crisis

Almost each EU country has institutionalized or at least has presented the need of institutionalizing the migration laws and policies in order to fasten the solution of this phenomena on their borders. The existence of local and national institutions helps a lot managing different aspects of people migrating, especially those who migrate illegally, but they are not enough. European Union needs not only institutions functioning in the framework of their country members, but moreover EU must highly act by "using" its own system of institutions as a mechanism to give proper solutions. The main institutions that do play a significant role on migration are of course Commission, Council and Parliament, Ombudsman, European Central Bank, European Court of Justice. These institutions have integrated migration agenda on their everyday work. Regarding to their competencies given by Lisbon Treaty, we expect from these institutions to give outputs on:

1. Commission: drafting different EU laws necessary for migration law, paying a special focus on illegal migration.
2. Council: orientating which must be the goals and objectives of EU policy making towards migration.
3. Parliament: should smartly play with different interventions on the decision-making process, by being closely in contact with local communities.

⁹⁾ https://www.ecfr.eu/publications/summary/all_at_sea_europes_crisis_of_solidarity_on_migration

4. Ombudsman: be aware when every migrant is “violated” by the work of EU administration and institutional mechanism.
5. European Court of Justice: must open different precedents on migration conflicts, in order to interpret EU law. Different stakeholders when drafting or implementing migration policies must “learn” from ECJ case law and practice.

*Would it be enough for migration crisis of EU to be managed only by the work of these main institutions? EU policy has conceived the work related to migration, by creating different agencies being responsible for operating with solutions on migration. Some of these agencies are ¹⁰⁾: FRONTEX¹¹⁾: The European Border and Coast Guard Agency EUROPOL¹²⁾; The European Union Agency for Law Enforcement Cooperation; CEPOL¹³⁾: The European Union Agency for Law Enforcement Training; EMCDDA¹⁴⁾: The European Monitoring Centre for Drugs and Drug Addiction; EASO¹⁵⁾; The European Asylum Support Office, etc. When it comes to Balkan migration, the public opinion highly promotes the fact that most of the Balkan people migrates towards EU. Researching in many databases of Western Balkan forums and EU institutions we cannot find a recent statistic that reflects the situation of people migrating from Western Balkans. *Does this situation affect the way how EU policies are taken to solve this problem? Is the lack of “numbers” an obstacle for many empty words and few institutional measures taken? In the framework of proposing solution/alternatives for treating migration from EU mechanism in Balkan region, the comparison between two ECJ cases would be our focus. Can analogy of these decisions be used for Western Balkan arena and what can Balkan countries must be aware of¹⁶⁾?**

The voice of ECJ must be followed in order to find out which are the current solutions that people having migrants’ status need to know. In the dynamic laws and sometimes the lack of laws specifically regulating migration issues, ECJ cases may be a good alternative to truly understand the status of a person “moving” in EU area. On the other hand, ECJ case law on migration can best serve when it comes to draft new policies, changing or implementing them. Considering ECJ jurisprudence as a very important tool to analyse the feedback of jurisprudence in order to balance the impact and the EU attitude in the Balkans we have chosen two case laws from European Court of Justice, in order to compare the decisions taken in two similar situations regarding migration. *How can the philosophy of these decisions can be adapted in Balkan reality?*

Chakroun (C-578/08, judgment of 4 March 2010)¹⁷⁾

Issues: Chakroun was a Moroccan man who arrived as a worker in the Netherlands in 1970 and married a Moroccan wife two years later. After having been employed

¹⁰⁾ https://ec.europa.eu/home-affairs/what-we-do/agencies_en

¹¹⁾ <https://frontex.europa.eu>

¹²⁾ <https://www.europol.europa.eu>

¹³⁾ <https://www.cepola.europa.eu>

¹⁴⁾ http://www.emcdda.europa.eu/emcdda-home-page_en

¹⁵⁾ <https://easo.europa.eu>

¹⁶⁾ <http://www.europeanmigrationlaw.eu/en/caselaw/cjeu> is the link where different case laws on migration are collected and analyzed. This may serve as a very good indicator not only for researchers, but even for people that need a solution referring to their status as migrants

¹⁷⁾ <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-578/08>

for more than 30 years he became disabled and asked for reunification with his Moroccan wife, who still lived in Morocco, to support him in the Netherlands. The request was refused on the ground that Chakroun's monthly disability benefit was €20 below the 120% of the statutory minimum income required by Dutch national law in case of family formation, as the marriage had been concluded after his first admission in the Netherlands. The referring Dutch court asked whether the 120% income requirement and the different treatment of family reunification and family formation were compatible with.

Rules: Directive 2003/86, Lisbon Treaty

Arguments and Decision: The Court gave a negative answer to both questions. The Court repeated its position in Parliament/Council that the directive grants a subjective right to family reunification (para. 41). Since authorization of family reunification is the general rule, the income requirement in Article 7(i)(c) of the Directive must be interpreted strictly. The margin for manoeuvre which certain provisions of the directive allow Member States may not be used in a manner which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness of the Directive (para. 43).

The Court explicitly refers to its own case-law on family reunification of EU citizens in *Eind and Metock* "by way of analogy" (paras. 46 and 64). Moreover, the Court implicitly refers to the rule of Article 8(4) of Directive 2004/38 on free movement of Union citizens when holding that since the extent of needs can vary greatly depending on the individuals, Member States may indicate a certain sum as a reference amount, but not as meaning that they may impose a minimum income level below which all family re-unifications will be refused, irrespective of an actual examination of the situation of each applicant (para. 48).

Trojani ECJ case (C-456/02)¹⁸⁾

Issues: A Salvation Army volunteer requested minimum subsistence social assistance from CPAS, Brussels Public Assistance Centre in Brussels, Belgium. He was from France and went to Belgium in 2000, staying at a social camp in Blankenberge and then in Brussels, the youthful Jacques Brel Hotel. He was subsequently housed in the Salvation Army Hotel since January 2002. He received housing and pocket money to do work for 30 hours a week as part of a personal social-professional reintegration program. CPAS refused because he was not Belgian and said he could not benefit from the Free Workers Regulations 1612/68. The social assistance was refused on the grounds that he was not a Belgian national, but only enjoyed a residence permit in the Belgian state.

Rules: Article 12, Article 18 of the Treaty on the Free Movement of Persons, Free Workers Regulations 1612/69

Arguments of the parties: The Belgian competent authorities strongly supported the fact that the person could not be treated with the rights and obligations of "worker" status, as the regulation did not state the granting of social assistance where the person had only "residence permit" in Belgium .

In the meantime, Trojan strongly argued that the refusal of social assistance in its case goes against the spirit of the Treaty and urged the Court to decide instead on the denied right.

¹⁸⁾ <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62002CJ0456>

Decision: In the present case, as it appears from the decision for reference, Mr. Trojan performs, for the Salvation Army and under his direction, various tasks for approximately 30 hours per week as part of a personal reintegration program in return to which he receives in-kind benefits and some pocket money. Having determined that the benefits provided by the Salvation Army to Mr. Trojani constitute consideration for the services he performs for and under the management of the hotel; the national court has established the existence of constituent elements of any paid employment relationship, that is, dependency and remuneration. The European Court of Justice has ruled that refusing social assistance when a person has only a residence permit constitutes a violation of the Treaty. Even if one is not in the “ordinary” position of a job, it is enough to see whether his pay for the job he is doing is real, objective and real. In this way, his status becomes equivalent to the status of worker for the purpose of providing social assistance. What we see from these two decisions is the “difference” between the two cases. People that have only the residence permit on one side have been given all the other rights derived from directives and other aspects of regulations. On the other hand, on the first case other rights related to “residence status of living” are limited provided. On the previous cases, we identify a “contrary” attitude of ECJ towards migration of refugees. Does this affect the migration process of Balkan people towards Europe? Many people from Balkan region are migrating continuously on European countries; some of them are working on legal permission of residence. Referring to these two decisions, how can we find the proper solutions on how these categories should be treated? For example: will a person coming from our countries that is legally working in one of the European countries with a legal permission deserve a pension? Which are the facilities that can EU policies implement for re-integration of migrants coming from Balkan countries?

Some of the discussions held on the EU Parliament have repeated the fact that EU should prevent specific regulations for Balkan countries, considering the fact that this region is trying to be part of EU? Moreover, does this situation of EU legislation affects the European citizen? What about Balkan people?

These questions can be answered throughout the following issues, that we think that can be taken truly into consideration: statistics about legal and illegal migrants, https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics. But we have to be careful to not base our solution mechanism not only in numbers.

- The decision making of ECJ jurisprudence. Due to the fact that public administration in EU and Balkan region is not so “well prepared” to understand the actual law and adding also the fact that they face a lack of provisions in *acquis communitaire*, these structures may refer to ECJ jurisprudence to give urgent solutions when needed. This can serve for their work to be efficient to manage migration, but it would also be exceedingly difficult for them to argument the legal basis.
- The mission and vision of EU institutions in general. It has come the time that EU institutions and public authorities must present a unified practice towards migration, despite the diversity of the national approach to this issue.

Conclusions

If we make an overview of the entire mechanism of EU institutions, migration has been emphasized as an important issue in all EU policy-making agenda. This has also produced some disorientating or confusing situations when it comes to practical solutions to migration crisis. Different opinions of researchers consist on the strong collaboration that FRONTEX and EASO must have with each other, in order to manage the right of peaceful borders and at the same time respecting the rights of migrants coming through these borders. Generally, when it comes in the understanding of the EU institutions role towards migration crisis, the focus remains on the illegal migration. Illegal migration, even presenting the highest numbers of migrations facing at the same time legal, social, and political problems, it is only one dimension of the panorama. In the framework of this paper, we want to bring into attention that the role of EU towards migration must consist both on: legal migration inside EU; illegal migration (people coming from outside EU); legal migration inside EU; illegal migration inside EU (specific cases); migration of people from “candidate countries”. The free movement of people in the heart of EU needs specific migration policies regarding to their legal and social position. This of course, being treated in a theoretical perspective seems to be much easier, but when it comes as a matter of everyday life of agencies and institutions dealing with migrants, this means to find fast and proper solutions responding to each difficult case. The Western Balkan countries are very diverse as regards migration issues, despite their similarities in economic and political development. They share common challenges (in the context of the EU enlargement process) and problems in managing the migration crisis, and same typology of dominant migration, which is international migration. During a decade (from 2008-2018), a total of 2, 9799,766 people left the Western Balkans. Even though prevailing typology of migration from Western Balkans is nowadays emigration, in the last years some of the countries, such as Serbia, North Macedonia, and Croatia are facing a refugee crisis and must deal with it as well. On one hand the migration crisis (young people leaving the countries for better life conditions) and on the other hand the refugee crisis (people migrating for other reasons – people who have been forced to flee their country because of persecution, war or violence). Migration policies may cover various areas including the labour market, integration, and humanitarian/ asylum, family, co-ethnic, and irregular migration. Several migration policy indices exist, and more are under development. Civil society has been playing a major role in advocating and raising awareness to ensure about refugee needs. Legal support and advocacy have been used as tools necessary for migrants to achieve their legal rights. Other services include psychosocial support, child protection, educational support, etc which are mainly given by civil stakeholders.

BIBLIOGRAPHY

1. Bjerre, L.; Helbling, M.; Römer, F. and Zobel, Z., 2015, *Conceptualizing and Measuring Immigration Policies. A Comparative Perspective*, International Migration Review.
2. Čekerevac, A.; Perišić, N.; Tanasijević, J., 2018, *Social Services for Migrants: The Case of Serbia*, Croatian and comparative public administration.
3. Entzinger, H., 2007, *Open Borders and the Welfare State*, in Antoine Pecoud and Paul de Guchteneiere (eds.), *Migration without borders: Essays on the Free Movement of People*, Paris: UNESCO/Berghan Books.
4. Groenendijk, K., *Recent developments in EU law on migration, The Legislative Patchwork and the Court's Approach*, European Journal on Migration and Law 16 (2014).
5. Helbling, M.; Bjerre, L.; Römer, F. and Malisa Zobel, 2016, *Measuring Immigration Policies: The IMPIC Database*.

Other resources

<https://www.coe.int/en/web/portal/-/two-western-balkan-countries-still-struggle-with-migration-flows-but-face-different-challenges>.

<http://worldpopulationreview.com/countries/developing-countries/>.

<https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62002CJ0456>.

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-578/08>.

https://ec.europa.eu/commission/sites/beta-political/files/the_withdrawal_agreement_explained.pdf.

https://ec.europa.eu/home-affairs/what-we-do/agencies_en.

<https://frontex.europa.eu>.

<https://www.europol.europa.eu>.

<https://www.cepol.europa.eu>.

http://www.emcdda.europa.eu/emcdda-home-page_en, last seen on November 2019.

<https://easo.europa.eu>.

ABOUT THE AUTHORS

Olta Qejvani, PhDc., Lecturer of European Union Law University “Aleksander Moisiu”, Durres, Albania.

E-mail: oltaqejvani@uamd.edu.al

Elisabeta Bajrami Ollogu, PhDc., Lecturer of Social Policy University “Mother Theresa” – Skopje, North Macedonia.

E-mail: elisabeta.bajrami.ollogu@unt.edu.mk