

AKTUÁLNE OPATRENIA EURÓPSKEJ ÚNIE A ČESKEJ REPUBLIKY PROTI NELEGÁLNEJ MIGRÁCII V KONTEXTE ČESKÉHO PREDSEDNÍCTVA V RADE EURÓPSKEJ ÚNIE

CURRENT MEASURES OF THE EUROPEAN UNION AND THE CZECH REPUBLIC AGAINST IRREGULAR MIGRATION IN THE CONTEXT OF THE CZECH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

Matúš Vyrostko¹

Abstract

The Czech Republic presides over the Council of the European Union from the beginning of July to the end of December. This important position means that the presiding country leads all meetings at all levels of the Council. The topics that the Czech Republic, as the presiding state, will have to deal with are undoubtedly challenging. In addition to high energy prices and a high rate of inflation, the European Union and the countries of Central Europe in particular are troubled by the war conflict in Ukraine. This caused a mass refugee wave of migrants from Ukraine, but in the meantime, in addition to the humanitarian issue, the issue of an increased level of irregular migration and smuggling also opened up. It is precisely this topic that we address in the contribution in the context of the tasks of the Czech Republic as the presiding country. The aim of the contribution is the identification and evaluation of current measures against irregular migration in the Czech Republic and the European Union. In the contribution, we mainly use qualitative scientific methods of deduction, induction, comparison, analysis and synthesis.

Keywords

migration crisis, Council of the European Union, Czech presidency in the Council of the European Union, refugee, irregular migration

¹ Institute of Public Administration and Social Policy, Faculty of Public Policy in Opava
Silesian University in Opava

INTRODUCTION

It can be said that the migration of persons has been the subject of debates and discussions since time immemorial. In recent years, however, it is possible to observe the increased interest of the scientific community and the lay public in this issue. It is possible to conclude that logically and justifiably, since in 2015 the European Union recorded a significant increase in incoming migrants and refugees from third countries. Even though many of these people can be described as refugees, the situation was (and is) made much more difficult by the fact that a significant part of these people had outdated, invalid or no documents, which makes them classified as irregular migrants according to valid international documents. Nevertheless, in the event that persons escape from the country of origin, e.g. due to the war, according to the so-called Geneva Convention (see below in the main part of the text) they have the right to a certain degree of protection even without valid travel documents or other authorizations. This is a legitimate fact, but this fact undoubtedly contributes to more complicated processes of protection and assistance to fleeing migrants.

While the European Union did not manage to "recover" from the recent refugee crisis, the political uncertainty in Belarus or the security situation in Ukraine caused further waves of migration. The main difference may be the fact that, while in 2015 and 2016 migrant arrivals were mainly recorded by Western and Nordic countries, this time the V4 countries are at the forefront. The public authorities of the European Union and the states affected by migration thus find themselves in a situation where their task is to ensure relevant assistance and protection of refugees, as well as the protection and safety of their own population, which follows from the position of public authorities as well as international obligations.

It is necessary to say that the tasks and position of the Czech Republic as the currently presiding state of the Council of the European Union (and thus of the European Union as such)² is extremely demanding. The European Union is troubled by the military conflict in Ukraine, the refugee and migration crisis, and high energy prices. All this at a time when the world is just recovering from the recent COVID-19 pandemic. Government measures and central bank measures (apparently necessary) to mitigate the effects of the corona crisis in the form of financial aid to several sectors of public administration and the private sector have evidently contributed to the increase in inflation and a possible future economic recession or stagflation. Central banks are forced to raise interest rates in an attempt to bring inflation under control and stabilize currencies, in our case the euro and the Czech crown. Sanctions against the Russian Federation are also subsequently inevitably signed with negative consequences on the territory of the European Union. The refugee and migration crisis of 2015 and 2016 heralded further migration waves,

² The Council of the European Union is one of the basic institutions of the European Union. It works on the so-called principle of rotating presidency, when one of the member states presides over the Council of the European Union for a period of 6 months. Despite the fact that it is a single legal entity, its sessions are held in ten different compositions, depending on the topic to be discussed at the level of the Council. The Council for Justice and Home Affairs (SVV, en JHA), as well as the Council for General Affairs and the Council for Foreign Affairs, is fundamental in the issue of migration policy.

which the professional public and political leaders expect more from African and Middle Eastern countries due to climate change. Even taking into account, in some cases, the insufficient preparation of the states, it is possible to think that few expected a wave of refugees on such a scale from Ukraine.

At the time of writing the article, the most current issue, apart from social assistance to refugees, is probably the prevention of irregular migration. Naturally, in the case of a refugee crisis from Ukraine on such a scale, preventing smuggling and irregular migration is difficult. The Schengen area allows the free movement of persons on its territory, which makes it particularly difficult to control migrants at the borders and to clearly record them in individual states. For this reason, one of the currently adopted measures is the temporary reintroduction of internal border controls in some countries, including the Czech Republic.

Selected legal and theoretical starting points

It must be said that the migration policy falls under the exclusive competence of the member states, which have the right to decide what kind of persons they will admit to their territory and under what conditions. Naturally, by joining the European Union and the Schengen area, as well as by ratifying international documents, the states are committed to act within certain legal frameworks.

Before analyzing the legal status of migration policy at the European level, it is necessary to mention a key document that allows persons with an irregular status to legally stay in a country other than their country of origin on the basis of refugee status. It is primarily about the so-called Convention on the Legal Status of Refugees (Geneva Convention) ratified and legally binding for the Czech Republic (Communication No. 208/1993 Coll. of the Ministry of Foreign Affairs on the negotiation of the Convention on the Legal Status of Refugees and the Protocol on the Legal Status of Refugees)). According to this document, a refugee is mainly considered to be a person who, as a result of events before 1951, is outside his country and has a legitimate fear of returning to his country of origin due to possible persecution due to race, religion, nationality or because of belonging to a certain social group or holding certain political views. For these reasons, it has the right to refuse the protection of the country of origin. The convention also applies to persons who have multiple citizenships or no citizenship. The Convention does not apply to persons who have committed crimes against peace, a serious non-political crime outside the country of asylum before the person was admitted there as a refugee, or committed an act contrary to the principles of the United Nations. In connection with irregular migration, the Convention on the Legal Status of Refugees specifies in particular the issue of refugees irregularly staying in the country to which they have taken refuge. If the refugee is in the territory of the contracting state without a permit, or entered this state without permission, but reports without delay and proves the reason for irregular entry or presence, should not be prosecuted by the contracting state for this act.³

³ It does not have to be only about obtaining asylum, it can also be about other forms of additional protection and legalization of residence. This institute was also used in the case of the issue of refugees from Ukraine in the form of the establishment of the so-called temporary protection.

The Convention on the Legal Status of Refugees also states the duties of a refugee. In relation to the duties of a refugee, Article 2 of the Convention on the Legal Status of Refugees is key, according to which every refugee has duties towards the state in which he is located, which means that he must submit to laws and other regulations, especially measures related to the observance of public order.

The so-called New York Protocol of 1967 expanded the scope of the Convention Relating to the Status of Refugees and removed geographical and temporal limitations.

In the legal regulation of measures in the framework of the fight against irregular migration in the European Union, it is possible to start mainly from two directives of the European Parliament and the Council of the EU. The first is Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures of Member States for the purpose of returning nationals of third countries who are staying irregularly on their territory (Return Directive). According to this directive, the Member State of the irregular migrant is to legalize or issue a return decision.

As Collett points out in this context, the idea of returns associated with large-scale resettlement is simple and clear. However, according to the author, politicians perceive the agreement between the EU and Turkey through the "lenses of the last six months", which makes them focus more on Schengen, as a long-term period of five or more years. The complex and ever-changing dynamics of migration flows, together with the well-documented limitations of existing protection capacities in a wide range of countries (not only Greece and Turkey), suggest that another crisis for the European Union will not be far away (Collett, 2016). With the passage of time, it is possible to say that the author was not wrong in this matter.

One of the most current regulations in the context of irregular migration in the EU is the change in the legal basis of the Frontex agency. Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulation (EU) no. 1052/2013 and (EU) 2016/1624. According to Art. 1 of the European Border and Coast Guard Regulations, the European Border and Coast Guard is established to ensure European integrated border management at the external borders in order to effectively manage the crossing of external borders. Furthermore, according to Art. 21 "Each Member State shall designate, operate and manage a national coordination center that coordinates and exchanges information between all authorities responsible for external border control at national level, as well as with other national coordination centers and the Agency. Each Member State shall notify the establishment of its national coordination center to the Commission, which shall immediately inform the other Member States and the Agency."

Another document is Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing the Union Code on the Rules Governing the Movement of Persons Across Borders (hereinafter: the "Schengen Borders Code") in a codified version.

At the level of the Czech Republic, the key document is Act No. 326/1999 Coll. on the residence of foreigners in the territory of the Czech Republic and on the amendment of some laws as amended. According to §9 par. 1 the police will deny a foreigner entry

into the Czech Republic, e.g. in case the person does not have a valid travel document, or the document is fake, or does not have sufficient funds to stay in the territory and to travel from the territory. The police have the right to prevent citizens of the European Union from entering the territory of the Czech Republic, if they do not have a valid travel document and do not have a replacement document by which it would be possible to identify them, they will present a false document, whether they can endanger other people before introducing an infectious disease (current, for example, at the time of quarantine during the COVID-19 pandemic). Furthermore, if there is a reasonable danger that the person could threaten the security of the state or seriously disrupt public order, and also if the person is included in the register of undesirable persons.

In this case, it is necessary to further emphasize that a person does not have an immediate obligation to travel abroad, if he fulfills the above-mentioned factors. According to §10 par. 1 refers to cases where a person's life is in immediate danger due to a sudden illness, the failure to provide immediate health care would cause him permanent disease changes, or it is necessary to provide health care due to childbirth. According to the following paragraphs, the Police of the Czech Republic will ensure the transport of this person to the health care provider and subsequently to the border crossing.

Current issues and measures

According to the Frontex agency, the number of detected irregular entries into the European Union on the so-called Balkan route increased by 170% in the first nine months compared to last year's data (ČTK, 2022a). A 7.7 million people left Ukraine in the seven months since the beginning of the war conflict, of which 4.2 million received temporary protection in one of the member states of the European Union. Another 7 million people are on the move in Ukraine, according to the data from the International Organization for Migration (IOM). The Czech Republic registers more than 442,000 refugees from Ukraine, only Poland alone registers a larger number, 1.4 million (ČTK, 2022b).

It is therefore expected and natural that the states in Central Europe began to look into possible measures to reduce the number of irregular migrants on their territory. One of the possible measures in this sense is the temporary re-introduction of controls at the internal borders of the Member States in accordance with Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing the Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) in the codified version. According to Art. 25 of the Schengen Borders Code, it is possible to temporarily restore control of internal borders if there is a serious threat to public order or internal security without control. Controls can be renewed for a period of 30 days or for the foreseeable duration of a serious threat. The scope and duration of this control cannot exceed the minimum necessary time? to respond to a serious threat. However, the total period of restoration of internal border control may not exceed 6 months. In case of exceptional circumstances, the mentioned total period can be extended to 2 years. When assessing, the state must take into account the criteria for

the timely restoration of internal border control. According to Art. 26, it is mainly about the likely impact of any threats to public order or internal security, including as a result of terrorist acts or threats and also including threats posed by organized criminal activity and the likely impact of such a measure on the free movement of persons in an area without internal border control.

The Czech Republic took such a step after discovering an increase in detected irregular migrants from the territory of the Slovak Republic, who apparently got there by the so-called Balkan migration route through Turkey and Hungary.

We believe that one of the aspects that enabled the increase of irregular migrants moving in the member states of the European Union may also be the "relaxation" of the administrative and security processes for the entry of migrants from Ukraine to the territory of the European Union due to their high number and right to refugee status. It is therefore possible to say that a more effective and politically acceptable measure could be stricter control of the external borders with the help of the Frontex agency.

On 14 October 2022, the Minister of the Interior of the Czech Republic, Vít Rakušan, presented at the Council for Justice and Internal Affairs (JHA) new topics for future cooperation on the issue of combating irregular migration and possible tools for the redistribution of migrants. According to the Minister of the Interior, the key factor will be the introduction of the so-called "flexible solidarity"⁴, associated with the "flexible responsibility" system. According to the Minister of the Interior, one of the aspects is the introduction of other forms of assistance, such as accepting migrants from other states.⁵ Conversely, states that are burdened more by the number of incoming migrants should be allowed concessions in the form of a reduced administrative burden. The next key step should be bilateral negotiations in Albania and Serbia, as well as a review and political declaration on compliance with existing readmission agreements with neighboring states on the exchange of migrants. Negotiations on strengthened police cooperation are to be held with the Slovak Republic. According to the minister, in case of non-compliance with existing agreements, an adequate response could be the suspension of visa-free relations with Serbia (ČTK, 2022).

Further clarifications and concrete steps should be discussed at the announced summit of political leaders on October 24 and 25, 2022. At the time of writing, the conclusions of the negotiations were not yet known.

⁴ The mentioned proposals reflect the existence of a relatively controversial so-called of the temporary emergency relocation mechanism ("compulsory quota system"), which was established in September 2015 on the basis of two Council decisions, by which the Member States undertook to relocate up to 160,000 persons from Italy and Greece, or from other Member States, by September 2017. On June 8, 2015, the Commission adopted a proposal for a European resettlement mechanism, and on July 20, member states agreed to resettle 22,504 persons who clearly need international protection. On March 7, 2016, the European Council called for the implementation of relocation to be accelerated in order to avoid a humanitarian crisis in Greece. In its conclusions, the European Council on 20 and 21 October repeated the call (European Commission 2016).

⁵ This is not a new idea. The question of alternative "expressions of solidarity" in the issue of migrant redistribution appeared in the countries of Central Europe, including the Czech Republic and the Slovak Republic, already at the turn of 2015/2016, when the European Union was negotiating the adoption of the so-called mandatory quotas.

In ordinary conversation, a fusion of two terms is sometimes used, namely the so-called economic refugee. This term is not found in any available literature, but it can be used to name a refugee who rationally chooses a country to take refuge in based on the economic benefits provided. It is also necessary to emphasize that even an asylum seeker can be described as an economic migrant in a certain way, as long as he chooses the country of residence according to the economic benefits that his stay in that country will bring him. It is possible to think that the current situation, a less transparent situation due to the high number of migrants from Ukraine, makes it difficult for states to effectively identify the necessary humanitarian aid for individual refugees. However, this is an issue that deserves separate research, and with regard to the subject of the paper, we will not address it further.

It is expected that a substantial part of the refugees from Ukraine will remain in the Czech Republic even after the (hopefully soon) end of the war conflict in Ukraine. In this context, the Czech Republic and other European Union states, where refugees remain, face several challenges –we think that, in addition to humanitarian aid, it is also a matter of subsequent integration into society. While some political leaders express concern about increased crime caused by insufficient capacities of experts and specialists, (Hulmáková 2005) emphasizes that a higher crime rate can be observed especially among second and third generation foreigners. She further adds that the majority of ethnic minorities, who are burdened the most by crime compared to the majority population, are often economically and socially disadvantaged. In this case, when defining the term foreigner, Hulmáková leans towards the criminological point of view, when foreigners can also be considered persons who have already acquired the citizenship of the given state, or also the next generations of these persons.

In this context, it can be assumed that the challenge will be the effective inclusion and integration of foreigners into society, which can be complicated especially by the high number of migrants arriving in the EU.

We believe that one of the basic obstacles to the application of the mentioned tools in practice may be the very status of refugees, their identification and monitoring of movement within the European Union.

CONCLUSION

It is possible to take measures against irregular migration in the European Union with preventive or punitive measures. Some of the measures are implemented with the aim of repression as well as prevention of irregular migration and smuggling. In addition to criminal sanctions (which we did not deal with due to the scope of the contribution) and legislative measures, the conclusion of readmission agreements and the return of irregular migrants to their countries of origin, the strengthening of police cooperation, or effective border controls and border surveillance can be included among the key measures against irregular migration especially on the border with Ukraine.

Emphasizing that the issue of irregular migration and smuggling is only one part of the issue of managing migration flows and that the migration policy is crucial. In addition

to the conclusions of solutions and measures against irregular migration and smuggling, a comprehensive and well-crafted migration policy, whose overview and problem areas are offered in the presented article, requires an answer to solve other problems, such as e.g. integration of foreigners, or management of legal migration.

It is also necessary to say that the fight against irregular migration and smuggling requires a series of long-term, well-thought-out and follow-up measures, on which the representatives of individual member states will work together with the institutions of the European Union. However, the ideal solution would be to prevent such a situation with a series of preventive solutions, such as solving the unrest in the countries of origin of the migrants and eliminating the reasons for their emigration. Several authors consider climatic changes, in addition to war conflicts, to be one of the reasons for the departure of a large number of migrants from their countries of origin, and it is undoubtedly an issue that will need to be intensively dealt with in the future.

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Contact

PhDr. Matúš Vyrostko, PhD.
Institute of Public Administration and Social Policy
Faculty of Public Policy in Opava
Silesian University in Opava
matus.vyrostko@fvp.slu.cz