THE RIGHTS OF MIGRANTS BETWEEN THE NEEDS AND CAPABILITIES

of the state and the international community

Alcide De Gasperi University
of Euroregional Economy in Józefów

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Edited by Magdalena Sitek & Stanisław Stadniczeńko

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Introduction

The ease of information flow, among others about the standards of living in other parts of the world, generates not always true perceptions and stereotypes, especially among people experiencing the material and spiritual scarcity. It is when new needs, or even a claims against the state or the international community are born. They expect to provide a higher standard of living, better health care, the environment and natural resources, fair remuneration, attractive leisure and entertainment. The consequence of meeting all these expectations are higher maintenance costs, longer life time, a significant increase in spending on ecology and radical increase in funds for social assistance.

These changes are often accompanied by regional conflicts, causing a mass exodus of people from poorer areas covered by military activities. More and more people are moving to the economically and socially safer countries. Quite often in the background of these developments, there are some historical factors, especially long-standing colonial policy, or the present hegemonic ambitions.

Meeting the needs of new-era immigrants who are coming to Europe, alongside with growing needs and freedoms of its own citizens, raises question about the possibility of meeting these needs, especially those determining fundamental rights.

How the increase of domestic and international expenditures for social needs is related to the capacity of functioning social security systems, health care or the labour market? Are the financial and structural possibilities of individual countries able to cope with absolute respect for the principles of equal treatment of all citizens and all other people arriving to their territory? How, taking into consideration the mass influx of migrants, should we treat such issues as: freedom, the right to manifest own culture (especially religion), personal and national safety? It is possible to raise many of these questions. We hope that the answers will be provided by the authors of the particular elaborations.

These essays are of interdisciplinary and intercultural nature. Their authors are not only experts in the field of human rights or lawyers, but also economists, demographers, cultural theorists, historians, political scientists, canonists and theologians.

Editors

Securing the rights of refugees in international (universal) approach

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Abstract

The main scope of the problem is contained in the title of the article – Legal and institutional protection of refugees' rights in terms of a universal system of international protection of human rights. Protection of human rights, in the modern sense, has a global nature and it has significant importance for the democratic process. It should be noted that no system of human rights protection, including the universal system, is full and complete, because it must pass two levels, it means: external – international and internal – national.

The universalism of the Universal Declaration of Human Rights and the International Covenant provides the Constitution of Human Rights, which contain fundamental norms of human rights. In the sphere of universal international law related to refugees there are also the Geneva Convention and the New York Protocol. These acts paved the framework of the universal system of protection of refugees. In terms of institutional guarantees, we presented the organisations and institutions aimed at ensuring or securing specific and recognized rights or interests. They are of a general nature as well as specialized nature and together make up the protective potential of this system (the UN). There are also the independent non-governmental organizations. Exodus refugee provides one of the major challenges for human rights protection system in the twenty-first century and reveals the weakness of the universal refugee law and policies related to migration and refugee. New challenges are mainly of a practical nature which should be due to the realization of human and security needs.

Keywords: refugee, international law, asylum, human rights, migration, the United Nations.

Introduction

At the turn of the XX and XXI century, it has occurred and continues to experience a dramatic refugee exodus, which is, without doubt, one of the great challenges for the protection of human rights in the twenty-first century.

The new problems emerged and once again the idea of human rights was questioned. New challenges are practical. Millions of people want to get into Europe, causing a major political crisis in many countries in a united Europe. The absurd ideas from the point of view of migration policy are created. Uncontrolled wave of migration could threaten the still weak integration of the European Union.

We wish to introduce laws and institutional security issues of refugees in international – universal terms. The analysis will assess whether the system of international protection of human rights, including the refugees in universal terms, meets expectations and if it is suitable to the current situation arising in the XXI century.

Primarily, the international law is a guarantor of the rights of migrants and refugees including children. This law shapes the system of human rights protection both in the universal range (United Nations) and regional range, in the case of Europe, initiated by the Council of Europe, as well as making up the internal law of the European Union.

Rooting of the protection of refugees in the system of international protection of human rights are disclosed in the Article 14 of the Universal Declaration of Human Rights which states that every person, in the case of persecution, has the right to seek and enjoy asylum. The refugee status, as opposed to asylum, is a subject to regulation by both the norms of international law and national legislation.

The doctrine distinguishes between different types of granted asylum, taking into account the political asylum called territorial and diplomatic asylum, which consists in granting refuge in the diplomatic mission of the State (Sosnowski 1980, p. 21). The diplomatic Asylum is more common in Latin America than in other regions of the world. The right to grant territorial asylum is considered aa a norm of the customary law.

Legal guarantee of the basic human rights to those who have left their country of origin in the face of danger, as like in the situation where the country of origin has not complied with the obligation to protect within its jurisdiction, is nothing but a protection of refugees. Such an understanding of

refugee protection is complementary to human rights protection system as a subsystem (Goodwin-Gill 1989, p. 6 and next; Helton 1990, p. 119; Wierzbicki 1993, p. 93 and next; Noll, J. Vedsted-Hansen 1999, p. 363).

This underlines, at the same time, the specificity and partial autonomy of the international mechanisms for the protection of refugees resulting from the particular situation in which these people were. This leads to the distinction between refugee protection and immigration control policy – refugees. A fundamental problem is the efficient separation of people in real need of the international protection from those who are not in such need. So we will have to deal with the mechanisms geared to provide protection for individuals deprived of protection by their country and with the mechanisms geared to control immigration (Noll, J. Vedsted-Hansen 1999, p. 363). The general rules of international law imply the right to regulate the movement of people on its territory (Brownlie 2008, p. 519). This right is classified as primary and sovereign rights enjoyed by all States.

It should be emphasized that among legal theorists, the different theories on the issue of state rights in relation to persons residing in its territory were developed. The first theory, which operated since the early twentieth century (Runiewicz-Jasińska 2009, p. 302 and next), is that the state is arbitrary, no limited authority in making decisions regarding the stay of foreigners on its territory (Wierzbicki 1982, p. 89). At the beginning of the twenty-first century, with the rapid development of an international system of protection of human rights and freedoms associated with the United Nations, the first of the mentioned concepts become obsolete and lose its importance (Florczak 2006, p. 29). Currently, it is recognized that granting a foreigner the right to reside in the jurisdiction of a state or denying him this right, the state must take into account the norms of international law protecting persons (Góralczyk, Sawicki 2001, p. 271; Bierzanek, Symonides 2015, p. 265) and the state must provide legal protection of the universal human rights standards.

1. The legal system regulating the refugee matters

The Charter of the United Nations (Brownlie, Goodwin-Gill 2010, p. 3), although it did not include the catalogue of fundamental rights, the issues of human rights are highlighted and indirectly, the need to protect human and also the need to protect refugees are emphasized. In 1949, based on the General Assembly Resolution of the United Nations, the Ad Hoc Committee for Refugees

and Stateless Persons (ECOSOC Res.248 (IX)B Study of Statelessness, 1949) was appointed to developed a draft of the international convention governing these issues. In 1951, the conference was organized in Geneva and during that conference, the text of convention on the status of refugees was adopted on 28th July 2051. This convention was a base to shape the universal system of the protection of the refugee rights (Draft Convention Relation to the Status of Refugees). There were some limits in the Convention (UNHCR, Collection of International Instrument and Legal Texts Concerning Refugees, 2004, p. 47) because the term "refugee" was narrow to the people describe by this term in accordance with the Agreement of 12th May 1926 (Arrangement Relating to the Issue of Identify Certificates to Russian and Armenian Refugees, 12th May 1926, p. 47) and of 30th June 1928 (Arrangement Concerning the Extension to Other Categories of Certain Measures Taken in Favour of Russian and Armenian Refugees, 2006, p. 63) and according the Conventions of 28th October 1933 (Convention Relating to the International Status of Refugees, 1933, p. 199) and of 10th February 1938 (Convention concerning the Status of Refugees Coming From Germany, 1938, p. 59.), Protocol of 14th September 1939 (Additional Protocol to the Provisional Arrangement and to the Convention concerning the Status of Refugees Coming from Germany, 1939, p. 141.) also according to the Constitution of the International Refugee Organization (Constitution of the International Refugee Organization, 1946, p. 3).

Undoubtedly, the universality of the Universal Declaration of Human Rights and the International Covenants (creating a constitution for human rights) lies in the fact that the contained standards are based on the fundamental principle of human rights, it means on the personal dignity of the human being, and on resulting from the dignity: liberty, equality, fraternity, solidarity, etc. "the Declaration of the Rights of Man and of the Citizen" is in fact not the regulation, but certain assertion of the beyond-constitutional standards (Dreier 2009, p. 9).

In the sphere of universal international law, the essential sources are: the Geneva Convention on the Status of Refugees, signed in 1951 and the New York Protocol relating to the Status of Refugees done in 1967 (Journal of Laws, 1991, No. 119, item 517). The Optional Protocol is the separate act, independent of the Convention and signing it obliges states to respect international arrangements for refugees, without having to accede to the Convention itself (Fitzpatrick 1997, p. 4).

Poland ratified those two Agreement only in 1991 and our country has been obligated by those regulations since 27September 1991. Those universal instrument of the protection of refugees are supplemented by the act of the regional law.

It need to be underline that in Europe, in opposition to the American or African solutions, there was no single regional policy on the refugees for the long period of time and the regional standards, which supplemented the Geneva Convention, were not developed (two agreements adopted under the auspices of the Council of Europe are the only exceptions: the agreement on the abolition of visas for refugees in 1959, ETS 31, and the agreement on transfer of responsibility of the refugees in1980, ETS 107).

The situation has been changed since the eighties when the refugee issues in connection with the immigration issues have become the subject of increasing involvement of Member States of the European Communities.

The respect for human dignity and the prohibition of discrimination based on race, colour, sex, language, religion, national or social origin, property, birth or any other situation are the universal standards. They constitute a guarantee of the rights that are addressed only to foreigners. These rights relate to, among others, freedom of movement and residence within the territory of the host country, access to medical care or benefit from social assistance in that country. The limit of these rights is the facto legal residence of a foreigner on the territory of the host country. The protection of right of an alien against arbitrary expulsion and the right to international protection from persecution in their country of origin (asylum) is also important.

Noteworthy is the use of article 26 of the Geneva Convention relating to freedom of movement: each contracting State will give to refugees, lawfully staying in its territory, the right to choose their place of residence and the right to move freely within the territory, with the accordance to the regulations applicable to aliens generally in the same circumstances. The United Nations High Commissioner for Refugees (UNHCR) points out that article 26 refers primarily to recognized legally refugees, but it can also be used in the case of foreigners applying for refugee status, who reside on the territory of the host country in accordance with the law, it means also to those who have applied for refugee status after crossing the border unlawfully. Any restrictions on the choice of the place of residence should not be used against these people (Field Ophelia).

It is given in the literature that the principles of international law to protect refugees began to take shape only in the first half of the twentieth century (Hathaway 1984, p. 348; Wierzbicki 1993, p. 13 and next). The term "refugee status" adopted by the Geneva Convention and the New York Protocol paved the framework of a general system of refugee protection (Hathaway 1984, p. 348). In these acts, the refugee status is based on the recognition of the individual because of the risk of persecution is entitled to protection by guaranteeing not turning him or her back to the borders of the territory, where he or she would be exposed to persecution, as well as by guaranteeing their rights in the host country. As it is defined in article 1A of the Geneva Convention, the refugee is a person who is outside the country of origin and who cannot or do not want to use the protection of that country or return to it (this is due to well-founded fear of persecution), the fear of persecution is rooted in religion, race, nationality, membership of a particular social group or political opinion (Wierzbicki 1993, p. 35 and next).

Inconsistent use of criteria for granting refugee status by the European countries has prompted the Parliamentary Assembly of the Council of Europe to issue a recommendation on the harmonization of the policy of granting refugee status (Recommendation 787 (1976)). A significant role in the interpretation of the provisions of the Geneva Convention is played by the UNHCR. A particular importance is given to the recommendations issued taking into account the conclusions of the Executive Committee and the Manual of Procedures and Criteria for determining refugee status. Asylum policy encountered problems for many years in the EU. These problems were caused by the lack of a compromise between Member States.

M. Kowalski says that "the principle of *non-refoulement* is fundamental to the protection of refugees, (Smith 2006, p. 441). The article 33, paragraph 1 of the Geneva Convention provides the prohibition of expulsion and turning back a refugee, in any manner, to the borders of territories where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This prohibition was adopted to be called the principle of *non-refoulement*. The principle of *non-refoulement* has crucial importance because – in the context of discretion for granting asylum by the state – is a decisive part of the framework for the protection of refugees. On the one hand, the individual at risk of persecution is only entitled to apply for the right to asylum; on the other hand, States Parties

of the Geneva Convention and the New York Protocol, defining the category of persons (refugees) in need of international protection and guaranteeing them a minimum standard of protection, committed themselves to abstain from refoulement, which is essential for protection from persecution / ... / The principle of non-refoulement has an essential importance for the protection of refugees also in the sense that it is inextricably linked to all the other key elements of the system and determines: the scope of persons covered by the term "refugee", and consequently the categories of people who – while remaining outside the scope of this concept – are in need of international protection; the right of access to the asylum procedure with the key issue of responsibility of States to examine an asylum application; the standards for asylum procedure, taking into account, for example: the suspensive effect of the appeal proceedings; the scope of the rights guaranteed to beneficiaries of protection, for example: in the context of the protection of refugee families, complementary protection mechanisms applicable in the event of a mass influx of people seeking protection" (Smith 2006, p. 441).

It should be noted that those who are guilty of tort international law (Czapliński 1993, p. 10 and next), in particular, the crimes of international law and progressing against the purposes and principles of the United Nations, have been excluded from the protection of the Convention (Potyrała 2005, p. 69). The offenses or ordinary crimes should not be a base for the refusal of protection of persons resulting from the Convention.

It should be emphasized that the right to reside on the territory of a third country, until the procedure for granting refugee status is done, is one of the six basic entitlements of refugees (Hathaway 2005, p. 278). The right of refugees to apply to them the non-refoulement principle also follows from the provisions of European Union on asylum. The fact that the various human rights instruments have been developed under the auspices of the United Nations and have been ratified by many countries, is considered as proof of the existence of universally shared values. One of the primary purposes of the United Nations was to establish and to describe as broad as possible the normative standards of human rights. These standards have been established in the Universal Declaration of Human Rights and in the two International Covenants on Human Rights. It set the canon in the field of normative protection of human rights in the world.

In addition to these above mentioned treaties, the fallowing regulation belong to the treaty system of human rights protection within the UN:

the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, along with three additional Protocols, the Convention on the Elimination of all forms of discrimination against women, together with the additional Protocol, the Convention on the protection of migrant workers and members of their families and the Convention on the rights of persons with disabilities together with the additional Protocol. Obviously, that these are not all the conventions as the number of treaties regulating various aspects of human rights protection adopted within the framework of the United Nations it is much greater.

The Universal Declaration of Human Rights as the resolution of General Assembly is not legally binding, however, its importance is beyond doubt. It became the basis for a number of UN resolutions and other international instruments. According to the predominant in doctrine thesis, the Declaration acquired binding force through the transformation of its provisions into the international custom. Many constitutions implemented directly the provisions of the Declaration, not referring to it. Secondly, the standards contained in the Declaration have been formulated so as to apply *erga omnes*, it means: not only between countries but also in society. Undoubtedly, the legislative, administrative and judicial practice of many countries around the world was influenced by the Declaration. The article 1 opens the UDHR with a fundamental statement about the inalienable rights: „All human beings are born free and equal in dignity and rights". The article 2, paragraph 2 extends the prohibition of discrimination on the distinction "on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs". This solution extends protection against discrimination of foreigner because of the status of the country or territory of origin.

The International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, in the article 2, obliges States Parties to ensure all rights expressed in the Covenant without discrimination to all persons on their territory and being the subject to their jurisdiction. It might turn out that the expression of protection in the international system is inadequate, if there would be not a commitment to effective implementation by the States Parties as it is provided in the article 2, paragraphs 2 of the ICCPR (McGoldrick 1991, p. 272). The obligation to implement at national level was emphasized

in the General Comment No. 3 (Uwagi Ogólne Komitetu Praw Człowieka nr 3 1981, p. 2.). The Committee also stressed provided in the Covenant obligation to ensure the rights set out under the ICCPR to all people on the territory of the State and being the subject to its jurisdiction (Ibidem) In the General Comment No. 31, replacing the General Comments No. 3. the Committee notes that the use of the rights provided in the Covenant is not limited to only to citizens of States Parties but must be available to all individuals, regardless of nationality or if they have not the nationality. The Committee determines that it is about the individual, such as: asylum seekers, refugees, migrant workers and others who may find themselves in the territory or within the jurisdiction of a State Party (Ibidem, p. 10). Such a position the Committee has already, in its General Comment No. 15 (Uwagi Ogólne Komitetu Praw Człowieka nr 15, 1986), in which it referred to the situation of foreigners. The ICCPR takes the issue of foreigners in the article 12, which gives, to every person lawfully staying in the territory of a state, the right to freedom of movement and choice of residence within it, the right to leave the country, and also prohibits the denial of entry to their own country. The article 12, paragraph 3 expresses the prohibition to restrict those rights, with the exception of the need to protect national security, public order, public health or morality or the rights and freedoms of others, but the restrictions must be consistent with the ICCPR.

The article 14.1 points out on the access to the refugee procedure. The ICCPR, in the articles 9 and 12 guarantees to everybody the protection against the arbitrary restriction of personal freedoms. The article 9, paragraph 1 states that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". The article 12, paragraph 1 says that: "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence".

In the article 8, the Covenant provides that "no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited" and in the article 24 "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State". The article 27 draws the attention

to an important bicultural approach. Unaccompanied children should not be deprived of liberty for the immigration reasons which is provided in the articles 7 and 9. It was pointed out to search for and to connect families and contact with the family – article 23.1 and on the wider temporary care in the article 1.1, 19, 21, 22, 24.1 as well as on the assistance in obtaining citizenship of the residence country – article 24.3.

It should be noted that the protection of the rights of foreigners in the universal system would not be complete without the protection of their rights provided for in the International Covenant on Economic, Social and Cultural Rights of 16th December 1966. The ICESCR, in article 1, gives to all nations the right to self-determination, added that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". The Covenant, in article 2 specifies that the nations (State Parties) may freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation. In the article 2, paragraph 2, the Covenant provides the prohibition of discrimination (analogous to the views expressed by the ICCPR): States Parties shall ensure the rights of economic, social and cultural rights provided for in the ICESCR without any discrimination. In the article 2, paragraph 1, the State Parties are obliged to take to take steps, "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures" (Uwagi Ogólne Komitetu Praw Gospodarczych, Socjalnych i Kulturalnych nr 3, 1990, 5 sesja, p. 2,8,9,10).

In the nineties of the twentieth century, the human rights were promoted to the fore within international relations. In the Vienna Declaration of 1993 on human rights, it was stated in point no 4 that "the promotion and protection of all human rights is a legitimate concern of the international community". One of the obstacles to enforce and protect the rights, which was "artificial division between internal and international human rights issues" was overcome. In the Declaration, among others, most based on cultural relativism arguments against human rights were rejected. In point no 5, it is stated that "all human rights are universal, indivisible and interdependent and interrelated". Democracy, development and respect for human rights and fundamental freedoms were recognized as the interdependent and mutually supportive elements. The catalogue of human rights was expanded by

including in it, previously not sufficiently protected, the rights of refugees and displaced persons, minorities and indigenous peoples, women and children people with disabilities and the rights under international humanitarian law.

In this reflection on the problem of refugees matters, we cannot omit the issue of child – refugees and the Convention on the Rights of the Child as the basis for further considerations on this topic. In the context of the Convention, States must see their role as fulfilling clear legal obligations in relation to each and every child. Implementation of the human rights for children cannot be treated as an activity providing a favour to children.

The realization of the rights of children by the governments, parliaments and the judiciary is required for effective implementation of the Convention in general and, in particular, in the light of the articles of the Convention identified by the Committee on the Rights of the Child as general principles expressed in:

- ⇨ the article 2 defining the obligation of the Member for respecting and guaranteeing the rights contained in the Convention, within the limits of their jurisdiction, to each child without discrimination of any kind. The obligation concerning non-discrimination requires that State actively identify individual children and groups of children, who recognizing and in relation to who, the implementation of rights may require special measures;
- ⇨ article 3, paragraph 1 stressing that the best interests of the child is an imperative in all actions concerning children. This article refers to activities undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies". The principle contained in this article requires active measures done by the government, parliament and judiciary. Every office or institution of legislative, administrative or any authority or institution of justice is obliged to apply the principle of the best interests of the child by systematically analysing the impact or potential impact of their decisions or actions on the rights and interests of the child, for example: through the proposed or existing law or policy, or administrative action or court decision, including such actions or decisions that do not relate directly to children, but which have indirect impact;
- ⇨ article 6 selecting another weighty principle that every child has the inherent right to life and the States Parties are required to ensure, to the maximum extent, possible living conditions and development of the child;

- ⇨ article 12 stating the child's right to express those views freely "in all matters affecting the child", taking these views given due weight. This is the principle which emphasizes the role of the child as an active participant of the process of promotion, protection and monitoring of their rights, applies equally to all measures adopted by the State for the implementation of the Convention;
- ⇨ article 4, obliging all States Parties to take all steps to implement all the rights enshrined in the Convention, including the article 19. Applying the article 4 of the Convention, it should be noted that the right to protection from all forms of violence mentioned in the article 19 is a civil right and freedom.

Based on the article 43 of the UNCRC, the Committee on the Rights of the Child was established in 1990. The evaluation of actions taken by the States Parties to the exercise of the rights of children by the Committee and the developed of General Comments play an important role in the interpretation of international standard, although those comments, as well as statements given by other treaty bodies, have the power of recommendations only.

Extremely important is the attention of the Committee indicates that "in assessing the claims of refugees submitted by children unaccompanied or separated from the family, the State should take into account the development and the relationship between international human rights and refugee law, including positions developed by UNHCR in the exercise supervisory functions under the Convention on refugees of 1951. In particular, the definition of a refugee under this Convention must be interpreted in a manner sensitive to the age and gender, taking into account the special motivation and forms and manifestations of persecution experienced by children. Persecution by a relative, child labour, child trafficking for purposes of prostitution and sexual abuse, or female circumcision are the specific to children forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the foundations under the Convention on Refugees 1951. Therefore, States should pay much attention to such forms and manifestations of persecution specific to children, as well as violence based on gender, in the formulation of national procedures for determining refugee status". It was found that the full use of all the rights of refugees and human rights by children granted refugee status should be made – article 22 of the UNHCR.

2. Institutions, bodies and non-governmental organizations dealing with refugees

In terms of institutional guarantees, traditionally, all the institutions of a legal system, aimed at ensuring or securing specific and recognized rights or interests are recognized. They may have the character of both general and specialized, and together form the protective potential of the system of legal protection. This applies to individual systems of international protection of human rights and (by analogy) the legal national protection.

Important for this part of the research, the characteristics of the institutional guarantees of international human rights protection needs to focus on the international organization, the structure of the office, as well as other organs remain with the organization in direct relation.

It stands out among the structurally complex contemporary international organizations, the most general division of institutional guarantees for: the statutory bodies – main and auxiliary and the special bodies set up under specific provisions, and in particular those called treaty bodies, thus acting within the strict framework of its treaty. Depending on the situation, in the context of individual international organizations, the specialized agencies appear (mainly in the UN system). There are also the independent, non-governmental organizations, which on the basis of specific authorization can be included within the scope of a particular procedure.

Currently, the sources of refugee law are derived from three legal systems: the international system, the regional system (for example: the European law, including the Community regulation) and the national legal system.

The United Nations (UN), created in 1945, is the only international organization of universal range. According to the article 7, paragraph 1 of the Charter of the United Nations, the internal structure of the organization includes six main bodies: the General Assembly, the Security Council, the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice and the General Secretariat together with the Secretary-General. That provision provides, depending on emerging needs, the ability to create various subsidiary bodies. All the organs of the United Nations constitute the backbone of the organization and each of them, to a certain extent, has to perform a specific control task in the broader area of human rights. The cooperation for the promotion and strengthening the respect for human rights is one of the main goal of the organization (article 1, paragraph 3 of the UN Charter).

The General Assembly is the main deliberating and decision-making body composed of representatives of all Member States. It operates within the framework of the regular session mode, as well as in special sessions organized at the request of the Security Council or the group of Member States. From the protecting human rights and freedoms point of view, it is essential that the General Assembly endorses in external relations, developed within the organization standards. In other areas of its activity the General Assembly makes recommendations to the individual Member States. The General Assembly competence, in the field of human rights, are *expressis verbis* provided in the article 13, paragraph 1 of the UN Charter.

The Security Council is a collegial body, and its leading role is the responsibility for the maintenance of international peace and security. The Council has a broad ability to respond to the received complaint or notice: from the usual recommendations addressed to the parties to the conflict to entered into an agreement with peaceful means, through its own investigative activities and mediation. In the case of the most inflammatory conflict, the Security Council may use the Directives (for example: regarding the end of a firefight or sending UN peacekeepers). In the framework of its powers, the Security Council also has the opportunity to decide on enforcement measures such as the application of economic sanctions or peacekeeping action.

In the structure of the UN, the Economic and Social Council is a body that has been granted with many tasks directly referring to the issue of human rights and freedoms. According to the article 62, paragraph 1 of the UN Charter Council, the Council shall take or initiate studies and reports on the international economic, social, cultural, educational and health issues.

The International Court of Justice is the principal judicial organ of the United Nations with headquarters in The Hague. The scope of the Court's jurisdiction covers mainly the settlement of disputes between Member States and to give advisory opinions at the request of the General Assembly or the Security Council. The individuals do not have direct access to the Court and the importance of its activities for the protection of human rights, may be considered only in the level of indirect impact. It happens that the States submit to the ICJ disputes relating to violation of the rights of their citizens by other countries and acquire the dispute in accordance with the principle of fulfilling by a foreigner (a citizen of that country) national measures.

The Secretariat (together with the Secretary General) is the body that, beyond the current conventional administrative service for the entire organization, is engaged in substantive issues typically including in the preparation of studies in the field of human rights protection. The Secretary-General itself is the highest official of the United Nations representing the organization.

Under the resolution (A/RES/60/251) adopted on 15th March 2006, a new subsidiary body of the General Assembly of the UN – the Human Rights Council, located in Geneva was established. The Council replaced the Commission on Human Rights. The task of the Human Rights Council is to promote universal respect and protection of human rights and fundamental freedoms on an equal and fair manner to all people, regardless of their origin. The duty of the Human Rights Council is to deal with cases of human rights violations. The Council is to make recommendations for resolving cases of rights violations, carry out activities for the effective coordination of the work for human rights undertaken by the UN system. The Human Rights Council is guided by the principles of universality, impartiality, objectivity, constructive international dialogue and cooperation with the task of strengthening the observance and protection of all human rights, it means – the civil, political, economic, social and cultural rights and the right to development. The Human Rights Council should promote education in the field of human rights, support the development of the counselling and appropriate structures, provide technical assistance, in consultation with interested Member States, in order to serve as a "forum for dialogue" for stakeholders in issues relating to human rights, it should also make recommendations to the General Assembly, to ensure further development of international law, protecting human rights, support the implementation of the commitments undertaken by the country in terms of human rights, implement the goals and recommendations presented at the UN conferences and summits, carry out comprehensive periodic review regarding the fulfilment of commitments related to human rights by each State. These inspections should be made based on objective and reliable information and should be guided by the principle of equal treatment for all countries, they should develop recommendations for the protection of human rights on the basis of carried out comprehensive periodic review, to develop dialogue and cooperation aimed at preventing human rights violations. They should respond quickly to emergency situations of human rights violations, assume

the role and responsibilities of the Commission on Human Rights, working in close cooperation with the governments, the regional organizations and the national institutions dealing with human rights and civil society and it should submit annual reports to the General Assembly.

The office of the UN High Commissioner for Human Rights was created on 20th December 1993 based on a special UN General Assembly Resolution No. 47/141 (office has its headquarters in Geneva and in New York). The Commissioner is the primary body of promotion and information on the activities of the United Nations for the protection of human rights. It is to coordinate the activities of other United Nations bodies in this regard, provide access to current information, collaborate with the relevant institutions at the national level and support the education of human rights.

The Office of the United Nations High Commissioner for Refugees (UNHCR) was set up by the UN General Assembly on 14th December 1950. Range of subject-objective of this body is already set by its name. It conducts missions globally. The UNHCR protects today 22.3 million people in more than 120 countries. The UNHCR was originally established as a temporary office. Currently, over 60 years later, it is one of the most important humanitarian agencies based in Geneva and with the representations in more than 100 countries. In Poland, there is the Office of the High Commissioner for Refugees in Warsaw (http://www.unhcr-budapest.org/poland, access: 2016-07-12). The High Commissioner takes comprehensive action to protect the interests of refugees. Its duty is to conduct and regularly coordinate the international action in matters of refugees, including their rights to obtain asylum and to find safe place for them in a third country. The UNHCR supports refugees in several ways, including providing assistance in crisis situations (coordinates the distribution of water, hygiene products and medical care among clusters of refugees), through the establishment of an early warning system (the UNHCR delegates its observers to several former Soviet republics which have experienced tensions arising from the political transformation. Delegates are designed to constantly monitor the political situation in the country in order to give the international community opportunity to take early action in the event of armed conflict), by helping refugees who have returned to their country. The UNHCR is taking a number of projects on the local level, for example: reconstruction of roads and bridges, efforts to improve water quality and access to education and medical care.

The UN Committee on the Rights of the Child was established on the basis of the Convention on the Rights of the Child on 20th November 1989. Basic task of the Committee is to monitor the fulfilment of the Convention by States, issuing comments (interpretation) of the Convention on the Rights of the Child. On the basis of the Protocol III to the Convention, the Committee shall consider individual cases.

In the structure of the United Nations, there are specialized agencies, which have an autonomous status and which cooperate with the United Nations and between each other to each. The interaction takes place at intergovernmental level (together with the coordination of the Economic and Social Council (ECOSOC)) and on the level of cooperation between the secretariats. Among the specialized agencies of the most well-known, especially in the field of human rights are: the International Labour Organization (ILO), the Food and Agriculture Organisation (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF). Each of these organizations has clearly outlined the competence and the various legal instruments with which carries out its tasks, including tasks for children. The most well-known and recognized specialized organization, with the longest tradition, is the ILO, which is a leader in the formulation of standards for the interests of workers and employers within the broadly defined labour relations, including the protection of children from exploitation and forced labour. The ILO develops its own conventions (treaties) and recommended standards (recommendations). It also has a unique tripartite structure which combines the principles of equivalence cooperation of the government with the representation of employees and employers.

In addition to the UN agencies, more than 200 international organizations (both governmental and non-governmental) deal with the issue of helping refugees. Some of them have consultative status to the United Nations. There are:

- ⇨ the Association for the Study of the World Refugee Problem, was established in 1961 and it is headquartered in Vaduz; mainly deals with coordination of research on refugee problem;
- ⇨ the International Committee for Refugees from Central and Eastern Europe (now Organization for Migration) established in 1949 with headquarters in Brussels, dealing with assistance to refugees from the region of Europe; currently its importance to the changes in Central and Eastern Europe declined;

- ⇨ the European Consultation Committee on Refugees – asylum seekers, was established in 1979 with headquarters in London, gathered more than 50 non-governmental organizations; its aim is promotion and social oversee of the implementation of the law in different countries, their compliance with the Convention and international legal assistance for asylum seekers; one of the forms of action is creation with this organization, the European Legal Network for Asylum;
- ⇨ the International Council of Welfare Agency with headquarters in Geneva, was established in 1962 as a result of merger of the Conference of Non-governmental Organization on Emigration, the Conference of Charity Agency for Refugees, the International Committee for World Refugee Year; the desire of the organization is to create a forum for cooperation of member organizations aimed at exchange of information and opinions about the possibilities of assistance to refugees, as well as helping all associations and institutions dealing with refugees;
- ⇨ the International Council of Voluntary Agency located in Geneva, grouping 80 non-governmental organizations, dealing mainly with issues of care seeking asylum and already recognized as refugees;
- ⇨ the International Committee of European Migration, established in 1951 with headquarters in Geneva, whose goal is to help immigrants from countries with surplus labour and political refugees; the assistance is possible in close cooperation with the governments of the countries of migration and emigration; the Committee organizes, among others, language courses, vocational training, the information actions and it provides financial assistance, including cover travel costs of migrants;
- ⇨ the International Organization for Migration was established in 1948 with headquarters in Geneva as an intergovernmental organization dedicated to the problems of displaced people and assistance to refugees and migrants in Europe (currently throughout the world); it has operated in Poland since 2002, it deals with medical examinations of migrants, language learning, providing assistance to migrants returning to their home countries;
- ⇨ the International Social Aid was founded in 1921 under the name of the International Aid for Migration; from 1924 it is self-employed and it adopted its current name in 1946; it has its headquarters in Geneva, provides assistance to migrants, and examines the impact of migration on personal and family situation of moving people.

Non-governmental organizations (NGOs) are a very important factor to objectivize the protection situation of the person, the man – a citizen in relations with the State authorities. Today, in the international protection of human rights, the NGOs exist and widely practice the use of various control procedures with the professional support of NGOs. There are of the non-governmental organizations providing assistance in the field of human rights, including the refugees: the International Red Cross and the Red Crescent Movement, "Caritas", the Amnesty International, the Human Rights Watch, the Jesuit Refugee Service, the Quaker United Nations Office in Geneva, the International Save the Children Alliance, Terre des Hommes, the Defence for Children International and the World Vision International. Together with NGOs partner for example UNICEF provides care, support and in some cases financial support in order to implement national plans for disarmament, demobilization and rehabilitation of child soldiers.

The group of unaccompanied minors, whose legal position is protected by international law, is the most sensitive group and it requires special procedure, good practice and professional approach.

The Polish procedure for granting refugee status provided separate regulations that result from the Geneva Convention, as well as the recommendations of the UN High Commissioner for Refugees on standards refugee procedures. The report of the Head of the Office for Foreigners clearly states that „Poland in 2014 realized in full the obligations under the Geneva Convention and the New York Protocol" (Informacja Szefa Urzędu do Spraw Cudzoziemców o stosowaniu w roku 2014). There is no doubt that with regard to minors and who are often subjected to the described procedure, there is no equivalent statement that the Office of for Foreigners feels the need of implementation, on behalf of the Republic of Polish, of children's rights contained in the Convention on the Rights of the Child. In addition, it provides implementation of the provisions of Council Directive 2003/9/EC of 27th January 2003 on minimum standards for the reception of asylum seekers (Dz. Urz. WE nr L 031 of 6th February 2003) and the regulation of Council Directive 2005/85/EC of 1st December 2005 on minimum standards on procedures for granting and withdrawing refugee status in Member States (Dz. Urz. WE nr L 326 of 13 December 2005), implemented into Polish law. As it is noted by J. Chlebny (Chlebny 2011, p. 334-335) "the protection of procedural rights of the unaccompanied minor in the Polish legislation does

not go as far as it is provided by the recommendations [...] of Committee on the Rights of the Child Commentary (Komentarz Ogólny Nr 6/2005 z 01.09.2005 r.)".

From the point of view of interests of the child – a refuge, the General Comment of the Committee of the Rights of the Child No. 6/2005 (Komentarz Ogólny Komitetu Praw Dziecka nr 6/2005) and the General Comment No. 14/2013 (Komentarz Ogólny Komitetu Praw Dziecka nr 14/2013) in point 9 (on procedures of immigration and asylum) are extremely important.

Summary

The universal system of international protection of human rights, including refugees, has arisen since the end of World War II. Basis of the protection of refugees are located in adopted by the United Nations the Geneva Convention on Refugees of 1951 and the New York Protocol relating to the status of refugees of 1967.

These universal instruments of the refugees' protection are supplemented by the acts created regionally and by individual states. The universal system, which has global and general nature, does not fit all situations in the various regions of the world that require the protection of the rights of refugees. Over time, the regional systems of human rights protection were established which put more stress on the specificity of local community and religious groups, as well as on a specific cultural group values. Four regional systems of promotion and protection of human rights – European, American, African and Arabic systems have been created so far. There is no such system in Asia and there is no indication that they had built it in the foreseeable future. The same applies to Oceania.

There are three families of human rights (also referred to as generations). The first group includes civil and political human rights, the second – the economic, social and cultural right, to both of these families, the human rights of the people are included. The third group is composed with the human rights which were recognized the 60s and 70s of the twentieth century. These are the rights of human solidarity – the fruit of the realization by the United Nations that there are needs and common threats of all humanity.

The subject scope of protection provided in the Geneva Convention is not sufficient. This was illustrated by the article 3 of the European Convention for the Protection of Human Rights, in relation to the protection of persons

seeking international protection. Consequently, these guarantees have contributed to the development of, for example in Europe, supplementing to the Geneva Convention, forms of protection: subsidiary protection (granted to persons who do not meet the conditions for refugee status, but are in need of international protection) and temporary protection (applicable in situations of mass influx of people seeking protection). It should be emphasized that the guarantees under the article 3 of the ECHR significantly impact on the interpretation of the refugee definition contained in article 1A of the Geneva Convention by the European countries.

It should be noted that the State – Parties, based on international law, have the right to control and regulate the entry, residence and expulsion of aliens from its territory. Currently, we are experiencing a migration crisis constitutes challenges for the protection of human rights in the twenty-first century.

The situation of migration – refugees in the XXI century indicates a significant weakness of the universal refugee law and policies related to migration and refugee. A selective approach to human rights is unacceptable. Procedural and definitional imperfection forces the international community to resolve the potential conflict between national sovereignty and the obligations for the protection of human rights – the idea is to begin to see the problem in a serious and responsible manner. It is fitting to recall the statement expressed in the final document of the Second World Conference on Human Rights held in Vienna in 1993: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (Deklaracja Wiedeńska 1993, s. 43).

The main responsibility for the realization of human rights rests with the State. The responsibility rest also on the international community. It has, however, a secondary and mainly controlling character. Meaning and significance of the UN Charter, adopted in 1945 must restored, which states that the United Nations are determined to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The Charter states

that the main purposes of the United Nations are „promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". It must be remembered that the Universal Declaration on Human Right adopted by the General Assembly of the United Nations says that „All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

The Declaration states that „it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". In the Declaration, it may be also read that "a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge".

The basic value must still be the dignity of the human person, and this is due to it, there is a need to accept refugees. The newcomers however must accept European values and respect the normative system including the constitutions of the countries which have accepted them. It would be reasonable to assist and to support the States which cannot cope with the social, political and economic problems of forming refugee and migration groups. Europe with its European law and with its European culture must ensure the identity of the continent and Europe must reconcile its identity and with openness.

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The protection of religious freedom of emigrants in Spain

La protezione della libertà religiosa degli immigranti in Spagna

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Abstract

In Spanish law, religious freedom of foreigners is contemplated in all legislative levels. For more than twenty years, since the promulgation of the Spanish Constitution in 1978 and, subsequently, the Organic Law on Religious Freedom, enacted in 1980, until 2000, the protection of religious freedom of immigrants in Spain was not a concern for the Spanish legislator. It is due to the fact that the law on religious freedom considers the individuals as holders of that freedom. It means that the individuals could be both Spanish nationals and foreigners. However, the enactment in 2000 of the Organic Law on the rights and duties of foreigners in Spain and their social integration, marked the introduction of an odd distinction between foreigners, which could be in a regular or in an irregular situation in Spain. That fact affected some rights contained in the broad right of religious freedom, such as the rights of assembly or the right to meet themselves for religious reasons. So, Spanish legislation on limited the access to such rights by foreigners in an irregular situation. These restrictive rules were considered inconstitutional by Spanish Constitutional Court; so, it finished that discrimination. This work also deals with rules agreed between the Spain and the main religious communities existing in Spain (Catholics, Protestants, Jews and Muslims) to ensure the religious assistance of foreigner people inside the immigration detention centres.

Keywords: Immigants, religious freedom, foreigners, legislation, protection, Spain.

1. Il fenomeno dell'emigrazione in Spagna. Alcune considerazioni dal punto di vista sociologico

Per molto tempo, la Spagna è stata uno Stato di emigrazione. Questa tradizionale situazione è cambiata verso il cambio del secolo XX al XXI, quando l'emigrazione degli spagnoli all'estero è scessa e, allo stesso tempo è cominciato a salire tantissimo l'immigrazione di stranieri. È così, che sin

dagli ultimi anni del secolo scorso, la Spagna è cambiata diventando un paese di ricevimento di persone di altri paesi. Benchè nei primi anni del secolo XXI ancora c'erano più spagnoli al di fuori delle frontiere spagnole che stranieri immigrati in Spagna (Pérez-Madrid, 2004), il certo è che in pocchi anni la relazione cambiò in radice e la società spagnola diventò in multiculturale, con cittadini di diverse razze, lingue, culture e religione. Fra I nuovi cittadini venuti dall'estero risalgono quelli provenienti di paesi dell'America Latina e poi, di paesi africani e asiatici, quasi sempre a maggioranza musulmana.

Le differenze razziali non sono importanti con nessuno di questi due grandi gruppi d'immigranti. Nel caso concreto degli immigrant venuti dall'America non ci sono affatto problemmi di convivenza multiculturale perchè condividono la lingua e la cultura, ambedue spagnole, e la religione, dato che nella sua maggioranza sono catolici. Ma, con quelli provenienti dei paesi africani e asiatici, c'è un chiaro contrasto linguistico, perche non parlano spagnolo ma arabo, francese o altre lingue, e in conseguenza, anche c'è, anche, un contrasto culturale. Dentro di questo gruppo, al di sopra della lingua o la cultura, il fattore di multiculturalità che ci interessa di più, perchè comporta le maggiori conseguenze sociali e giuridiche è la religione. L'Islam, non si può dimenticare, è la religione che professano la maggioranza di questi immigranti, e questa, senza dubbio, in alcuni casi supone che il comportamento personale dei fedeli suoi, siano contrastanti con l'ordine pubblico spagnolo.

2. La libertà religiosa e gli stranieri nella Costituzione spagnola del 1978

Prima di vedere gli articoli costituzionali sugli stranieri e sulla libertà religiosa, dobbiamo iniziare con due articoli molto importanti che incidono nella comprensione e l'interpretazione di quelli. Così, in primo luogo, c'è l'articolo 9.2, dove si stabilisce che corrisponde alle autorità pubbliche promuovere le condizioni perchè la libertà e l'uguaglianza degli individui e dei gruppi a cui appartengono siano reali ed efficaci, rimuovendo gli ostacoli che impediscono o ostacolano la loro pienezza e facilitare la partecipazione di tutti i cittadini nella vita politica, economica, culturale e sociale.

D'altra parte, c'è anche l'articolo 10, che dà inizio al título primo della Costituzione "Sui diritti e doveri fondamentali", per sottolineare i fondamenti della convivenza soziale. Così, il suo comma 1 afferma che la

dignità della persona, i diritti inviolabili che sono inerenti, il libero sviluppo dell'individuo, il rispetto della legge e dei diritti altrui sono il fondamento dell'ordine politico e della pace sociale.

Anzi, il comma 2 di quest'articolo 10 accena la rilevanza dei trattati internazionali in questa materia, nel dire che le norme in materia di diritti fondamentali e le libertà che la Costituzione riconosce devono essere interpretate in conformità con la Dichiarazione universale dei diritti umani e con i trattati internazionali e gli accordi sulle stesse materie ratificati dalla Spagna. Non è il nostro proposito approffondire sul contenuto di queste Dichiarazioni e trattati sui diritti fondamentali, i quali sempre fanno riferimento al diritto di libertà religiosa, quando non hanno questo diritto come contenuto specifico. Siccome questo argomento si allontana degli scopi di questo studio, adesso soltanto basta dire che, nel Diritto spagnolo, i trattati internazionali sono parte integrante dell'ordinamento giuridico spagnolo tramite la sua pubblicazione nella Gazzetta Ufficiale (*Boletín Oficial del Estado*). Così, l'articolo 1.5 del Codice civile spagnolo stabilisce che le norme giuridiche contenute nei trattati internazionali saranno direttamente applicabile in Spagna nel momento in cui diventino parte del sistema giuridico interno attraverso la sua pubblicazione integrale nel cosidetto *Boletín Oficial del Estado.*

Dopo queste considerazioni preliminari, arriviamo a l'articolo 13 de la Costituzione, quello che direttamente si riferisce agli stranieri, e lo fa in questo modo: "gli stranieri in Spagna devono godere delle libertà pubbliche garantite dal presente titolo (intitolato 'Dei diritti e doveri fondamentali') nei termini stabiliti dai trattati e dalla legge".

Non c'è dubbio che la Costituzione spagnola dà a tutti gli stranieri la stessa possibilità di usufruire di tutti i diritti, fra cui c'è quello di libertà religiosa, e che, in conseguenza, offer a tutti la stessa protezione della sua libertà religiosa, senza distinzioni. L'unica limitazione costituzionale ai diritti degli stranieri non si riferisce a la materia religiosa: il comma 2 dell'articolo 13 soltanto allude ai diritti dell'articolo 23, un'articolo che fa riferimento al diritto di suffragio attivo e passivo.

Anche si vuole dire che "i trattati" e "la legge" a cui fa riferimento il comma 1 dell'articolo 13 sono quelli che regolano I diversi diritti e libertà costituzionali, sviluppando così le previsioni della Costituzione. Come vedremmo, nel caso della legge sugli stranieri la regolazione introdusse delle limitazioni nell'esercizio di certi diritti relativi alla libertà religiosa (quelli di riunione, manifestazione

e associazione religiosa) per quanto aggiunse l'esigenza dell'autorizzazione di dimora o di residenza in Spagna. Per fortuna, queste restrizioni furono dichiarate incostituzionali posteriormente per la Corte Costituzionale.

3. La legislazione spagnola sulla libertà religiosa

L'articolo 16. 1 della Costituzione garantisce la libertà ideologica, religiosa e di culto. Queste libertà vengono garantite, tanto agli individui come alle comunità religiose senza altra limitazione alla loro espressione di quanto sia necessario per il mantenimento dell'ordine pubblico tutelato dalla legge.

Lo stesso articolo, nel suo comma 3, stabilisce uno Stato non confessionale, uno Stato laico di separazione mitigate, anche noto come "di sana laicità", quando afferma che non c'è nessuna religione di Stato, e che le autorità pubbliche avranno conto delle credenze religiose della società spagnola.

Come si è già detto, la società spagnola è diventata multiculturale, diversa. Nell'ambito religioso, sebbene Spagna ancora sia a maggioranza sociologica cattolica, sicuramente non è omogenea, perchè accanto a quella maggioranza ci sono tante minoranze religiose, tante credenze diverse, sulle quali, i poteri pubblici spagnoli devono avere conto per mandato costituzionale.

La Legge Organica 7/1980, del 5 luglio, sviluppa la previsione dell'articolo 16 della Costituzione. Fra altre questioni regulate da questa legge, ci interessa la regolazione sul contenuto di questo diritto e sulle sue limitazioni.

Per quanto riguarda il contenuto del diritto di libertà religiosa, la legge sulla libertà religiosa offre un elenco dei diritti inseriti dentro del ampio diritto di libertà religiosa. L'articolo 2 parla tanto dei diritti di titolarità individuale come di queli di titolarità collettiva, delle confessioni religiose. Ci interessa i primi, elencati nel comma 1, perchè i diritti individuali, come abbiamo già detto, possono praticarsi tanto dagli nazionali spagnoli che dagli stranieri.

A seconda di questo articolo, la libertà di religione e di culto garantita dalla Costituzione comprende, con immunità di coercizione, vale a dire, senza coerzione, una serie di diritti di ogni individuo, elencati in quattro gruppi, senza esaurire la possibilità che ci siano altri diritti non elencati.

Il primo gruppo di diritti individuali si riferiscono alla manifestazione o espresione delle credenze. I diritti esplicitamente mencionati sono professare le credenze religiose liberamente scelte e di non professare

alcuna credenza; modificare o abbandonare la confessione che aveva; esprimere liberamente le proprie convinzioni religiose o la sua assenza, e il diritto ad astenersi dal testimoniare su di loro.

El secondo gruppo di diritti fanno riferimento alle pratica cultuale. Questi sono i diritti di praticare gli atti di culto e ricevere assistenza religiosa della sua propria confessione; celebrare le loro feste; celebrare i loro riti matrimoniali; ricevere degna sepoltura, senza discriminazioni per motivi religiosi, e non essere costretto a compiere atti di culto o ricevere assistenza religiosa in contrasto con le proprie convinzioni personali.

In terzo luogo, ci sono i diritti vincolati con la diffussione delle credenze e con l'educazione. Questi son oil diritto di ricevere e diffondere l'educazione religiosa e le informazioni di tutti i tipi, oralmente, medianti gli scritti o con qualsiasi altro procedimento; scegliere per se stessi e per i minori non emancipato e disabili che ci siano sotto la sua dipendenza, sia dentro che fuori la scuola, l'educazione religiosa e morale secondo le proprie convinzioni.

Il quarto gruppoo si riferisce ai diritti di riunione e associazione per motivi religioso. Concretamente, in questo gruppo ci sono i diritto a rinirsi o fare manifestazioni pubbliche per scopi religiosi, a aderire a associazioni per sviluppare in modo comunitario le loro attività religiose, sempre in modo conforme all'ordinamento giuridico generale e con le disposizioni della stessa legge di libertà religiosa.

Dobbiamo sottolineare che tutti questi diritti, come dice la stessa legge di libertà religiosa appartengono a "ogni individuo", sia nazionale spagnolo che straniero.

Altro articolo di questa legge che non si può dimenticare per la sua importanza, è l'articolo 3.1, dove si stabiliscono le limitazioni del diritto di libertà religiosa. D'accordo con la previsione dell'articolo 16, nel senso che l'unica limitazione alla espressione della libertà religiosa è "quanto sia necessario per il mantenimento dell'ordine pubblico tutelato dalla legge", la legge organica sviluppa e spiega il concetto d'ordine pubblico, che è un concetto giuridico indeterminato, come limitazione di questo diritto.

A l'hora di concretare che cosa sia l'ordine pubblico, la Legge Organica sulla libertà religiosa contiene uno sbaglio linguistico, perche parla, erroneamente da un punto di vista semantico, di "limiti" invece di "limitazioni" come fa la Costituzione. In verità un "liimite" sarebbe una frontiera che determina uno

spazio di giurisdizione; in realtà, questo viene regolato dall'articolo 3.2 della Legge, sull'ambito di applicazione della Legge, o, in altre parole, che attuazioni non sono protette dalla legge per non entrare nell'ambito concettuale di "libertà religiosa". Invece, una "limitazione" si riferisce all'attuazione dello stesso diritto, o, in detto in modo contrario, alla attuazioni che non si possono fare purtroppo essere, per esempio, conseguenza di mettere in pratica un precetto religioso.

Sulle limitazioni alla libertà religiosa, l'articolo 3.1 della Legge dice che l'esercizio dei diritti contenuti nel diritto di libertà religiosa e di culto è limitato soltanto dalla tutela del diritto degli altri di esercitare le loro libertà pubbliche e dei loro diritti fondamentali e la salvaguardia della sicurezza, della salute e della moralità pubblica, che costituiscono gli elementi dell'ordine pubblico tutelato dalla legge in una società democratica.

Questo significa che l'ordine pubblico viene integrato tanto per il rispetto dei diritti fondamentali e delle libertà pubbliche altrui, come per altri tre elementi costitutivi che sono anche loro dei concetti giuridici indeterminati: la sicurezza, la salute e la morale pubblica. Si vuole, per tanto, una maggiore concretizzazione di questi elementi, fatta dalla giurisprudenza e dalla dottrina.

Così, si considera che la sicurezza pubblica sia la protezione delle persone e dei beni suoi; la sanità pubblica viene considerate come il mantenimento delle condizioni di salubrità generali, e la morale pubblica, come il rispetto dei valori, tanto religiosi come ideologici, che la società considera validi, e che non possono essere soltanto i valori di un gruppo sociale o religioso benchè sia quello maggioritario.

Alcuni esempi concreti di queste limitazioni sono, per quanto riguarda la sicurezza pubblica, che non sia possibile allegare motivi religiose per riuscire a farsi la carta d'identità indossando un burka o un velo che copra totalmente il viso della donna musulmana.

Nel caso della sanità pubblica, questa impedirebbe, nei rituali relgiosi, l'uso di psicotropici o drogue, o la realizzazione di sacrifici di animali, o pretendere seppelire un cadavere senza la precttiva vara o scattola che impedisce la probabilità di diffondere malattie.

Finalmente, la morale pubblica, considerate dalla dottrina come l'insieme dei valori religiosi e ideologici d'una società, non proprio i valori di un solo gruppo benché sia la maggioranza, impedirebbe tanto la possibilità di andare

nudo per la strada, come, a mio parere, andare una donna totalmente coperta per il burka, sebbene su questo ancora non c'è una decisione unanime dalla giurisprudenza.

4. La legislazione spagnola sugli stranieri

La legge che sviluppa la previsione constituzionale sugli stranieri risale all'anno 2000, concretamente, si tratta della legge organica 4/2000 dell'11 gennaio sui diritti e le libertà degli stranieri in Spagna e sulla loro integrazione sociale, publicata nel *Boletín Oficial del Estado* del 12 gennaio di quel anno. Benchè il suo lungo nome, questa legge è conosciuta in Spagna semplicemente come la "*Ley de extranjería*" (Legge sulla 'stranierità', che in avanti faremmo menzione come "Legge sugli stranieri"). Dal punto di vista della libertà religiosa degli stranieri, questa legge è stata studiata da Pérez.Madrid (2004).

Questa legge derogò una precedente, che risale al 1985: la Legge Organica 7/1985, del 1 luglio 1985, sui diritti e libertà degli stranieri in Spagna. Dobbiamo sottolineare, da una parte, che la legge che fa riferimento alla libertà religiosa delle persone immigrate in Spagna non é una legge sulla immigrazione, anzi una legge sugli stranieri in Spagna, sui loro "diritti e libertà" inclusa la libertà religiosa, ma non soltanto quella, ed anche, "sulla loro integrazione sociale", che è la finalità della legge e che, come vedremmo, ci da un'idea della politica spagnola sulla immigrazione.

D'altra parte, si vuole anche incidere sul fatto che, nello stesso anno 2000, pocchi mesi dopo la promulgazione (nel mese di gennaio) della Legge Organica sugli stranieri in vigore, fu riformata per la Legge Organica 8/2000 del 22 dicembre, pubblicata nella Gazetta Ufficiale del giorno successivo. Una nuova riforma ebbe luogo nel 2003: fatta dalla Legge Organica 14/2003, del 20 novembre (che coglie l'opportunità per riformare anche altre leggi), pubblicata nella Gazzetta Ufficiale del 21 novembre. La giustificazione di questa legge, a seconda della sua motivazione (*Exposición de motivos*) si trova nei costanti cambiamenti di un fenomeno mutevole com'è il migratorio, e l'aumento, negli ultimi anni, del numero delle persone straniere residenti in Spagna.

Questa "catena" di successive leggi successive per regolare i diritti degli stranieri in Spagna a che vedere con le vicisitudini sofferte per il Regolamento di essecuzione o di applicabilità della Legge 4/2000, approvato per il Regio Decreto (*Real Decreto*) 864/2001, del 20 luglio, pubblicato nella Gazzetta Ufficiale del 21 luglio, e con l'intervento della Corte Suprema (*Tribunal*

Supremo) mediante la sua decisione del 20 marzo 2003, che dichiara la nullità di parecchie precetti del Regolamento del 2001. Per tanto, questo Regolamento fu sostituito per un altro (previa promulgazione dell'ultima modificazione della Legge Organica nel 2003, come abbiamo visto): il nuovo Regolamento fu approvato dal Regio Decreto 2393/2004, del 30 dicembre, pubblicato nella Gazzetta Ufficiale del 7 gennaio 2005. La sostituzione fu la conseguenza di quello disposto nella Disposizione Aggiuntiva (*Disposición Adicional*) Terza della Legge Organica 14/2003.

Finalmente, anni dopo, la Corte Costituzionale spagnola (*Tribunal Constitucional*) si pronunciò dichiarando l'incostituzionalità d'alcune delle disposizioni della Legge Organica mediante la decisione 260/2007, del 20 dicembre 2007, pubblicata nella Gazzeta Ufficiale del 22 di gennaio, che studiaremmo in modo approfondito più avanti.

Detto tutto questo, è l'ora di dare inizio allo studio specifico della legislazione spagnola sugli stranieri, e lo faremmo rispondendo a questa domanda: Qui è straniero in Spagna? La sua risposta c'è nel primo articolo della legge. Così l'articolo 1.1º segnala che sono considerati come stranieri in Spagna ai fini dell'applicazione della stessa legge "coloro che non hanno la nazionalità spagnola".

Il legislatore spagnolo, nel definire la 'stranierità' applica il criterio di esclusione, a seconda del quale si considera, in principio, ai non nazionali come stranieri (Diez de Velasco, 200). Questo criterio è semplice e sembra ovvio, ma, allo stesso tempo, ha bisogno di una maggiore concrezione dato che, al meno nel Diritto spagnolo, ci sono casi particolari. Per questo, accanto al primo comma dell'articolo, che abbiamo già acennato, ci sono altri due comma, il secondo e il terzo.

Il secondo comma dell'articolo 1, in modo simile a quello che stabilisce l'articolo 13 della Costituzione, dice che "le disposizioni della presente legge si intendono, in ogni caso, fatte salve le disposizioni di leggi speciali e trattati internazionali di cui la Spagna è parte". In modo così ampio si fa un implicito riferimento ai suposti di doppia nazionalità, ammessa per la legge spagnola.

Questo significa che, in Spagna, possono avere persone inizialmente straniere che, a seconda della regolazione del Diritto internazionale privato spagnolo possono diventare spagnole, raggiungendo la nazionalità spagnola, senza perdere la nazionalità di origine. Evidentemente, questa possibilità non è possibile sempre, e la legge sugli stranieri non lo dice in modo testuale, ma d'accordo con "i trattati internazionali di cui la Spagna è parte".

Così, i supposti di doppia nazionalità ammessi sono conseguenza degli accordi internazionali avuti fra la Spagna e gli Stati, d'una parte, che hanno fatto parte del antico Impero Spagnolo o, d'altra parte, hanno stretti vincoli di vicinanza con Spagna. Nel primo caso, ci sono Argentina, Bolivia, Cile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Guinea Equatoriale, Honduras, Messico, Nicaragua, Panama, Paraguay, Perù, Portogallo, Porto Rico, Repubblica Dominicana, Uruguay, e Venezuela. Nel secondo caso ci sono Andorra, Brasile e Portogallo.

Da sua parte, il comma tre dell'articolo 1 allude agi stranieri appartenenti agli Stati dell'Unione Europea, la cui cittadinanza europea si tiene in conto. In questo senso, stabilisce che "i cittadini degli Stati membri dell'Unione europea e quelli a cui si applica il sistema comunitario sono disciplinati dalle norme che lo regolano, essendo applicabile la legge in quegli aspetti che poteva essere più favorevole". In questo modo, la legge spagnola riconosce le peculiarità della cittadinanza europea degli stranieri che siano nazionali dei paesi dell'Unione Europea, sebbene non essere una nazionalità commune (Landete, 2006; Ninatt & Gennusa, 2016).

Nonnostante, nell'ambito della protezione della libertà religiosa, questa circostanza non modifica la condizione straniera dei cittadini europei. Le consequenze in materia di nazionalità e condizione di straniero dell'appartenenza della Spagna all'Unione Europea sono studiate anche, fra altri, per Abarca Junco (2008).

La legge non poteva prevedere ulteriore disposizioni legali spagnole in materia di nazionalità. In questo senso, è molto importante la legge Legge 12/2015, del 24 giugno, relativa alla concessione di nazionalità spagnola agli ebrei sefarditi originari della Spagna, pubblicata nella Gazzetta Ufficiale del 25 giugno, 2015, e l'ulteriore Istruzione del 29 settembre 2015, della Direzione Generale dei Registri e Notai (*Dirección general de los registros y del Notariado*), sui proveddimenti relative alla legge 12/2015, publicata il 30 settembre 2015.

Queste norme sono, a mio parere, molto interessanti ed importanti, dal punto di vista del Diritto ecclesiastico spagnolo perchè il riconscimento della nazionalità spagnola viene dato per motivi prevalentemente religiosi e, allo stesso tempo, con lo scopo di riparare attuazioni ingiuste d'altri tempi. In questo caso, si tratta dell'espulsione degli ebrei dalla Spagna nel 1492.

Le linee dell'attuazione politica in materia d'immigrazione e i principi che le diverse amministrazione pubbliche devono seguire in materia sono stabilite

nell'articolo 2 bis, comma 2, che, nell'ambito che ci interessa, fa riferimento ai principi d'integrazione sociale degli immigrati attraverso politiche orizzontali dirette a tutti i cittadini; la parità effettiva tra uomini e donne; l'efficacia del principio di non discriminazione e, di conseguenza, il riconoscimento di uguali diritti e obblighi per tutti coloro che vivono o lavorano legalmente in Spagna; la garanzia dell'esercizio dei diritti che la riconosciuti dalla Costituzione, i trattati e le leggi internazionali; la lotta contro l'immigrazione clandestina; la promozione del dialogo e la cooperazione con i paesi d'origine e di transito dell'immigrazione attraverso accordi per regolare i flussi migratori e per promuovere e coordinare gli sforzi di cooperazione allo sviluppo. Questa disposizione fu modificata dalla Legge Organica 8/2000 del 22 dicembre, e dalle Leggi Organiche 14/2003 del 20 novembre e 2/2009 dell'11 dicembre.

5. I diritti degli stranieri in materia religiosa

5. 1. Nella Legge Organica sugli stranieri

La parità fra nazionali spagnoli ed stranieri, si stabilisce nell'articolo 3. 1. È così che gli stranieri in Spagna godono dei diritti e delle libertà riconosciuti nel titolo I della Costituzione, sebbene continua con le menzione a che tale parità sarà "nei termini stabiliti nei trattati internazionali", ed anzi, nei termini stabiliti nella stessa legge sugli stranieri e nelle leggi che disciplinano l'esercizio di ogni diritto fondamentale (com'è fra altre, la Legge Organica sulla Libertà Religiosa). L'articolo continua affermando la parità anche como un criterio di interpretazione: "come criteri generali di interpretazione, gli stranieri esercitano i diritti riconosciuti nella presente legge a parità di condizioni con gli spagnoli".

Poi, nell'articolo 3.2 si trova una disposizione molto simile a quella già acennata nell'articolo 10.2 della Costituzione, con questa dizione literale: "Le norme relative ai diritti fondamentali degli stranieri devono essere interpretate in conformità con la Dichiarazione universale dei diritti umani e dei trattati e accordi internazionali su quelle materie con vigore in Spagna", ma, aggiungendo un'importante avvertimento che entra pienamente nell'ambito del diritto di libertà religiosa e che richiama in modo implicito alle limitazioni di questo diritto: "…ma mon può essere sostenuta la professione di credenze religiose o convinzioni ideologiche o culturali di segno diverso per giustificare la realizzazione di atti o comportamenti contrari ad esse", intendendosi che "esse" sono le norme sui diritti fondamentali. Questa menzione si debe alla

riforma operata dalla Legge Organica 2/2009, dell' 11 dicembre, operata dopo la decisione della Corte Costituzionale già acennata.

D'altra parte, la vigente redazione dell'articolo 1, sul diritto di riunione e di manifestazione degli stranieri, dice semplicemente, nel comma 1, che gli stranieri hanno il diritto di riunione, nelle stesse condizioni dei cittadini spagnoli, anche redatto dalla Legge 2/2009 dell'11 dicembre. Nell comma due, afferma che i promotori di riunioni o manifestazioni in luoghi pubblici avanzeranno alle autorità competenti con l'anticipo previsto nella Legge Organica che disciplina il diritto di riunione, vale a dire, la Legge Orgnaica 9/1983, del 15 luglio, e che l'autorità competente non può vietare o proporre modifiche se non per ragioni specificate nella legge sul diritto di riunione.

Così, a seconda dell'articolo 8 della Legge Organica sul diritto di riunione, le riunioni in luogo pubblico (anzi, le manifestazioni) si devono comunicare per iscritto all'autorità governativa competente dagli organizzatori o promotori con un anticipo minimo di dieci giorni e massimo di trenta. Nel caso che ci siano ragioni straordinarie e gravi che possano giustificare l'urgenza di convocare e tenere riunioni in luogo pubblico o eventi, la la comunicazione, può essere fatta con almeno ventiquattro ore.

Il divieto o la modifica della riunione comunicata, a seconda dell'articolo 10 della Legge Organica sul diritto di riunione, potrà darsi se l'autorità ritiene che vi siano fondati motivi che possono verificarsi di avere disordini pubblici, mettendo in pericolo le persone o le cose. Nel suo caso, l'autorità può modificare la data, il luogo, la durata o itinerario della riunione o manifestazione. La risoluzione deve essere motivata e notificata entro un termine massimo di settantadue ore dopo la comunicazione dell'articolo 8.

La libertà di associazione è un altro diritto degli stranieri con certa relazione con la libertà religiosa viene riferito, in modo molto breve, nell'articolo 8 della Legge sugli stranieri: "tutti gli stranieri hanno il diritto di associazione, alle stesse condizioni dei cittadini spagnoli". Anche questo articolo è stato modificato dalla Legge Organica 2/2009, per gli stessi morivi: la decisione della Corte Costituzionale sull'incostituzionalità della redazione anteriore.

Altro diritti vincolato ala libertà religiosa, è il diritto all'educazione ha una molto dettagliata regolazione nell'articolo 9, che insomma, stabilisce la parità fra nazionali spagnoli e stranieri. Nonnostante, fra gli stranieri, questo articolo fa una piccola distinzione: d'una parte, gli stranieri sotto sedici che hanno il diritto e il dovere di istruzione, compreso l'accesso all'istruzione di base,

gratuita e obbligatoria e l'accesso al sistema pubblico di premi e sovvenzioni alle stesse condizioni dei cittadini spagnoli, nel comma 1.

D'altra parte, nel 9.2 dice che gli stranieri maggiorenni che "si trovano in Spagna" (non parla affatto di autorizzazione di soggiorno o di residenza in Spagna), hanno diritto all'istruzione in conformità con le disposizioni della legislazione specifica sull'istruzione; e che, in ogni caso, i residenti stranieri di età superiore ai diciotto anni hanno il diritto di accedere ad altri stadi di formazione posobligatorias, per ottenere le qualifiche corrispondenti, e il sistema pubblico di sovvenzioni alle stesse condizioni dei cittadini spagnoli.

Finalmente, il diritto alla ragruppazione familiar viene dettagliata negli articoli 16 a 19 della Legge sugli stranieri. La sua esposizione dettagliata di tutte le disposizione meriterebbe uno studio specifico, per questo. Soltanto segnalo quello che dice l'articolo 9.2, perchè per fares uso di questo diritto bisogna avere la residenza in Spagna: "Gli stranieri con residenza in Spagna hanno il diritto di ragruppare con loro ai familiari suoiche vengono determinati nell'articolo 17". E questo articolo concreta chi sono i familiari "ragruppabili":in modo molto breve, questi sono il coniuge, I figli e gli ascendenti in primo grado (genitori), con certe condizioni.

Finalmente, l'articolo 41.1.h) della Legge sugli stranieri stabilisce una eccezione specifica per i miistri di culto stranieri, in relazione col permesso di lavoro. Così, l'ottenimento di permesso di lavoro per l'esercizio non sarà necessario per i ministry di culto e per i rappresentanti delle diverse chiese e confessioni, sempre che ci siano regolarmente iscritti nel Registro delle Enntità Religiose (*Registro de Entidades Religiosas*), sempre che le loro attività siano funzioni strettamente religiose. Evidentemente, il permesso di lavoro si vorrà se il ministro di culto fa altre attività di carattere non religioso.

Al di fuori della Legge sugli stranieri ci sono parecchie norme che proteggono la libertà religiosa degli stranieri, dallo stesso modo che proteggono quella degli spagnoli, e che soltanto acenniamo: norme di carattere amministrativo, come gli organi dell'amminstrazione competenti in materia religiosa); costituzionali e processuali, mediante la possibilità di accedere alla protezione della Corte Costituzionale o dalla giurisdizione ordinaria nei casi di discriminazione o vulnerazione dei loro diritti fondamentali, e, specificamente, quello di libertà religiosa (Pérez-Madrid, 2004) o penali, con i reati che che proteggono i sentimenti religiosi e le credenze. Su questo argomento, Redondo Andrés (1998).

5.2. La libertà religiosa degli stranieri immigranti in Spagna nella Corte Costituzionale spagnola

La regolazione restrittiva di alcuni dei diritti concreti degli stranieri in materia di riunione, manifestazione e associazione e la libertà di organizzarsi nell'ambito religioso ha provocato parecchie decisioni del *Tribunal Constitucional*, concretamente, in un primo momento con la decisione (Sentencia) 260/2007, del 20 diciembre 2007, dove la Corte Costituzionale dichiarò incostituzionale il contenuto di tre degli articoli della legge sugli stranieri, concretamente gli articoli 7.1, 8 e 11.1 perchè hanno condizionato in maniera restrittiva l'esercizio dei diritti e libertà già detti, per richiedersi l'autorizzazione per risiedere in Spagna. Questa decisione del 2007 provocò l'ultima modificazione della Legge Organica sugli stranieri, nel 2009.

Qquesta decisione della Corte Costituzionale risolve il processo iniziato dal Parlamento della Comunità Autonoma (in questo caso, *Comunidad Foral*) di Navarra contro diversi articoli della Legge Organica 4/2000 in materia di diritti e libertà degli stranieri in Spagna e sulla loro integrazione sociale. La decisione ricevette tre voti contrari.

Nella redazione della Legge, l'articolo 7.1 affermava che gli stranieri havevano il diritto di riunione, in conformità con le leggi che regolano gli spagnoli e che potevano esercitare il diritto di riunione quando ricevono l'autorizzazione o la residenza in Spagna. Da parte sua, l'antico testo dell'articolo 8, dichiarato inconstituzionale, diceva, con parole simile a quelle dell'articolo precedente, che tutti gli stranieri havevano il diritto di associazione ai sensi delle leggi che lo regolano per gli spagnoli e che potevano esercitare questo diritto quando ricevono l'autorizzazione di soggiorno o la residenza in Spagna.

Finalmente, l'articolo 11.1, viene anche dichiarato incostituzionale ma soltanto dichiarando per quanto riguarda il diritto di sindacalizzazione libera, per affermare che gli stranieri havevano il diritto di organizzarsi liberamente e di partecipare a una organizzazione professionale, a seconda delle stesse condizioni dei lavoratori spagnoli, e che lo potevano esercitare quando ottenessero l'autorizzazione di soggiorno o la residenza in Spagna.

5.3. La libertá religiosa degli stranieri negli accordi con le confessioni religiose: l'assistenza religiosa nei centri di soggiorno per gli stranieri

I centri per gli stranieri furono creati dalla Legge sugli stranieri, e la sua concrezione reglamentare, per il successivo Regio decreto 162/2014,

del 14 marzo, che approvò le regole di funzionamento ed il sistema di funzionamento interno dei centri di detenzione per immigrati, pubblicato nella Gazzetta Ufficiale del 15 marzo. Concretamente, l'articolo 62 bis della Legge sugli stranieri stabilisce che i centri di soggiorno di stranieri (*Centros de Internamiento de Extranjeros*), in avanti CIE, sono sono enti pubblici di carattere non penitenziaria, l'ingresso e permanenza dentro di loro ha solo scopo preventive e precauzionale, essendo per loro garantiti i diritti e le libertà riconosciute nella legge (tra cui, naturalmente, il diritto alla libertà religiosa), senza altre limitazioni che la sua libertà di movimento, e sempre in base al contenuto e lo scopo della misura giudiziaria che approvvò l'internamento nel CIE.

In particolare, gli straniero in questi centri hanno, fra altri, i diritti, alla vita, l'integrità fisica e la salute, e non possono in nessun caso essere sottoposti a trattamento degradante o maltrattamento di parola o in opera rimanendo garantita la loro dignità e la loro privacy; la garanzia per esercitare i diritti riconosciuti dalla legge (anche, di nuovo, in modo implicito, il diritto di libertà religiosa), senza altre limitazioni che quelle derivanti dal loro internamento; e a avere con i loro figli minori, a condizione che l'accusa tale misura e la relazione favorevole sui moduli centrali esistono per garantire l'unità della famiglia e della sua privacy.

I CIE, la sua creazione ed scopi, è una questione molto discussa in Spagna, perchè sono luoghi dove, senza dubbio, si mettono in rischio mi diritti fondamentali delle persone che devono soggiornare lì. In materia dei problemmi che supongono per il diritto fondamentale alla libertà religiosa degli stranieri dentro di questi centri, il primo studio è dovuto a Salido (2011), a cui remetto, sebbene in questo studio non si ha potuto fare riferimento (per essere anteriore) alle novità legislative avute anni dopo. Infatti, poco tempo dopo di essere approvato il regolamento sui centri di soggiorni degli stranieri, furono firmati parecchi accordi fra lo Stato spagnolo e le più importanti confessioni religiose in Spagna, al fine di garantire e fare possibile l'assistenza religiosa delle persone immigrate che vivano, benchè in modo temporale, dentro di questi centri (Ramírez Navalón, 2016).

Queste intese particolari (*Acuerdos de cooperación)* sono stati fatti, da parte dello Stato, dal Ministero dell'Interno. Quello che si riferisce alla Chiesa cattolica, fu firmato dalla Conferenza Episcopale Spagnola nel 12 giugno 2014. Lo stesso ministero firmò, altri due accordi di cooperazione con due

entità religiose non cattoliche, ambedue de 4 marzo 2015, con la Federazione delle Comunità Ebraiche di Spagna (FCJE), e colla cosidetta Comissione Islamica di Spagna (CIE), sempre allo stesso scopo di garantire l'assistenza religiosa islamica in centri di internamento per stranieri. Finalmente, c``e un altro accordo di cooperazione con la Federazione delle Entità Religiose Evangeliche di Spagna (FEREDE), del 28 luglio, 2015.

Tutti questi accordi sono molto simili, hanno una redazione quasi identica, e soltanto sono differenti nelle questioni evidenti, come la menzione particolare dei riti specifici di ognuno, o dei ministri di culto con la sua denominazione confessionale.

Curiosamente, hanno un riferimento a la prima Legge sugli stranieri, del 1985, dove per prima volta si crearono in Spagna i centri di soggiorno degli stranieri: "La Legge Organica 7/1985 del 1 ° luglio sui diritti e le libertà degli stranieri in Spagna, creò i centri di soggiorno (di seguito CIES) per quelli stranieri nei procedimenti di rimozione. Questi centri non hanno natura penitenziario e riflettono la necessità di adottare misure di protezione o di prevenzione per consentire l'attuazione della normativa in materia di immigrazione". In questo senso, anche fanno riferimento alla giurisprudenza della Corte costituzionale ha rilevato nella sua sentenza 115/1987 del 7 luglio.

Logicamente, si aggiunge che "questi centri sono attualmente regolate dalla legge organica 4/2000 del 11 gennaio; che, ai sensi di questa legge e della dottrina della Corte Costituzionale, come abbiamo già acennato, le persone straniere nei CIE godono di tutti i diritti riconosciuti dalla legge, con le limitazioni inerenti alla privazione della libertà sofferenza e il regime del CIE, e che, tra questi diritti c'è il diritto di libertà religiosa, garantito dall'articolo 16 della Costituzione come un diritto fondamentale.

Per questo, gli accordi sulla assitenza religiosa nei centri di soggiorno per gli stranieri sono la logiac conseguenza di quello previsto nel articolo 16 della Costituzione e nelle Leggi Organiche sulla libertà religiosa, e sugli stranieri, ognuna delle sopranominate confessioni religiose, in conformità con la loro Intesa (*Acuerdo sobre asuntos jurídicos* del 3 gennaio 1979 nel caso della Chiesa cattolica o il rispetivo "*Acuerdo de cooperación*" del 10 novembre 1992 per le altre tre confessioni).

L'impegno delle parti degli accordi (lo Stato e le confessioni religiose) per fare possibile l'assistenza religiosa della religione propria di ogni straniero che ci sia dentro di questi centri e che appartenga a una delle quatro confessioni

che hanno riuscito l'accordo, suppone il compromesso dello Stato per garantire l'esercizio del diritto alla libertà religiosa di quelle persone detenute (questa, forse, sia la parola più giusta per descrivere la situazione degli straniero costretti a soggiornare in quei centri, benchè non sia in situazione penitenziaria, ma senza libertà deambulatoria) e che, anche, saranno adottate le misure necessarie per facilitare tanto l'assistenza religiosa come la pratica della religone.

Anzi, per l'assistenza religiosa (sia cattolica, che ebraica, musulmana o evangelica) gli accordi sottolineano che sempre deve assicurarsi il diritto alla libertà religiosa delle persone e il dovuto rispetto per i loro principi religiosi ed etici, e che il contenuto dell'assitenza sarà in conformità con le disposizioni degli articoli 2 e 3, già visti, della Legge Organica sulla libertà religiosa.

La clausola quarta dei quattro accordi contiene le stesse disposizioni relative ai diritti e doveri delle peresone incaricate per fare l'assistenza religiosa: devono rispettare le attività di assitenza che si esprimono nella seconda clausola (e che vedremmo dopo), e sottometersi alle norme, orari e disciplina del CIE e rispettare i principi della libertà religiosa stabiliti nella legge organica 7/1980 del 5 luglio.

La direzione del cenro deve fornire un luogo appropriato per la celebrazione di atti di culto e altre attività di assistenza religiosa, a condizione che sia permesso dalla sicurezza permesso e le attività del CIE, sempre nel pieno rispetto dei diritti fondamentali degli altti stranieri del centro.

A queste disposizioni communi a tutti gli accordi sull'assitenza religiosa nei centri di soggiorno degli stranieri si aggiungono le disposizioni particolari.

Così, le persone incaricate di realizzare l'assitenza religiosa (clausola terza degli accordi) vengono nominate a seconda della sua denominazione tradizionale confessionale. Così, nell'accordo con la Chiesa cattolica si parla di "sacerdoti e altre persone qualificate con esperienza pastorale con gli immigrati". Nell'accordo con la Comissioe Islamica di Spagna, le persone responsabili per fornire l'assistenza assistenza religiosa islamica sono gli imam e altre persone qualificate con esperienza assistenziale con gli immigranti", e nell'accordo con gli ebrei, sono "i rabbini e altre persone qualificate con esperienza".

Nei quattro accordi, l'elezione delle persone incaricate dell'assitenza religiosa è compito dell'autorità confessionale, (l'Ordinario per mi cattolici, la FCJE per gli ebrei, o la Comissione Islamica per i musulmani) e formalmente autorizzati, in tutti i casi, dalla Direzione generale della polizia. Anzi, la clausola

terza di ogni accodo permette che l'autorità confessionale possa dimettee le persone nominate per realizzare l'assistenza religiosa. Questa autorità confessionale dovrà essere tenuta in conto nei casi processi amministrativi di rimozione. Finalmente, la clausola quinta di tutti gli accordi ammete la collaborazione del volontariato ("Cristiano", nel caso dell'accordo con la Chiesa cattolica, o "musulmano", nell'accordo con la Comissione Islamica di Spagna), nominate anche questi per l'autorità confessionale sopradetta e dalla stessa autorità statale. In tutti i casi, il volontariato è composto di "uomini e donne con una vocazione e preparazione specifica".

Finalmente, il contenuto dell'assitenza religiosa, previsto nella clausola seconda, è quello dove, logicamente, c'è le maggiori differenze fra i quattro accordi.

L'assistenza religiosa cattolica comprende le seguenti attività: la celebrazione della Santa Messa la domenica e le festività religiose, e potestativamente qualsiasi altro giorno; la visita ai detenuti, la ricezione nel suo ufficio da parte della persona preposta alla cura pastorale e l'attenzione a coloro che desiderano sollevare domande, dubbi o problemi religiosi; la formazione e istruzione religiosa e, se necessario, consulenza su questioni religiose e morali; la celebrazione di atti di culto e l'amministrazione dei sacramenti; e, eventuali altre attività pastorali direttamente legate allo sviluppo religioso integrale dello straniero del CIE.

Da parte sua, le attività comprese nell'assistenza religiosa islamica sono: la celebrazione della "*Salah*" il venerdì e le feste religiose, e potestativamente qualsiasi altro giorno; la visita a detenuti, il ricevimento nell'ufficio della persona responsabile dell'assistenza religiosa per coloro che desiderano sollevare domande, dubbi o problemi religiosi; la formaxione e istruzione religiosa e, se necessario, la consulenza su questioni religiose e morali; l'assistenza agli stranieri detenuti di tutte le questioni relative al cibo *halal*; dare consigli ai responsabili del CIE in tutte le questioni inerenti alle esigenze islamiciheper i prodotti alimentari *halal*; la celebrazione di atti di culto; e qualsiasi altre attività assistenziali direttamente legate allo sviluppo integrale dello straniero nel CIE.

E finalmente, l'assistenza religiosa ebraica comprende le seguenti attività: la visita ai detenuti, la ricezione nel suo ufficio da parte di chi procura l' ssistenza religiosa per coloro che desiderano sollevare domande, dubbi o problemi religiosi; la formazione e l'istruzione e, se necessario, la consulenza

su questioni religiose e morali; l'asistenza per lo svolgimento di funzioni religiose ogni venerdì sera e sabato mattina e le festività del calendario ebraico inclusi nell'accordo di cooperazione tra lo Stato, concretement, nell'articolo 12, della Legge 25/1992, del 10 novembre, e potestativamente qualsiasi altro giorno; l'assistenza ai detenuti in tutte le questioni relative al cibo kosher; dare consigli ai risponsabili del CEI in tutte le questioni inerenti alle esigenze ebraiche per i prodotti alimentary *kosher*; la celebrazione di atti di culto; e altre attività direttamente connesse allo sviluppo religioso integrale dello straniero detenuto nel CEI.

6. Riflessioni conclusive

La libertà religiosa degli stranieri, in Spaga, viene protetta nei diversi livelli legislative, dalla Costituzione alle legge di sviluppo delle libertà riconsciute nella Costituzione, come le leggi sulla libertà religiosa e quella sui diritti e doveri degli stranieri in Spagna, fino alle intese fra lo Stato e le principali confessioni religiose, e le norme ammistrative di livello inferiore, come quelle che regolano i cosidetti centri di soggiorno per stranieri.

Sin dalla promulgazione della Costituzione spagnola nell'anno 1978 e la successiva legge organica sulla libertà religiosa del 1980, fino al 2000, la tutela della libertà religiosa dei migranti in Spagna non è stata una vera preoccupazione per il legislatore spagnolo, dato che la legge sulla libertà religiosa considera come agli individui come titolari del diritto alla libertà religiosa. Ciò significa che, come titolari di questo diritto, ci sono compressi qualsiasi individui, siano cittadini spagnoli che stranieri.

Tuttavia, l'entrata in vigore nel 2000 della legge organica sui diritti e doveri degli stranieri in Spagna e la loro integrazione sociale, ha segnato l'introduzione di una distinzione tra gli stranieri che non c'è nella Costituzione. Questa distinzione (o meglio, discriminazione) ha interessato i diritti concreti contenuti nel ampio diritto alla libertà religiosa, come era il caso dei diritti di riunione, associazione o manifestazione per motivi religiosi. Così, la legislazione spagnola limitò l'accesso ai diritti da parte degli stranieri: quelli che c'erano in in situazione d'irregolarità, per non avere il certificate di residenza o di soggiorno in Spagna. Queste regole restrittive furono dichiarate incostituzionali dalla Corte costituzionale spagnola, che finì con questa discriminazione.

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Respecting the human rights – the rights of immigrants. Between needs and capabilities of the countries hosting the immigrants

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Abstract

The immigration has been a part of the human history since ancient times. The movement of immigration from the Middle East, which has taken place since 2008, fits into this statement. The Middle East conflicts, and consequently the risk of loss of life are the reason for this latest immigration. It is also the time of reflection on the acceptance of the immigrant as a the individual, who is entitled to human rights, the same as anyone else. At the same time, it is necessary to place the question of the limits of openness to immigration movement. The ability to ensure appropriate living conditions for immigrants in the host country should be the borders for this growing immigration movement. This requires a financial and organizational commitment. To what extent, therefore, those may be the limiting criteria from the perspective of proper protection of human rights of immigrant?

Keywords: human rights, immigrants, the right to life, the right to decent living conditions, the cultural identity.

Introduction

The European Union for two years (2013-2015) has been experiencing a real "invasion" of immigrants on a scale unprecedented since the invasion of the so-called barbarian peoples of Europe in the late antiquity and in the early Middle Ages. The size of this immigration will have a definite impact on the future shape of political, demographic and economic future of Europe, as it was after the invasion of barbarian peoples. Then, a new political (the feudal system), economic and social system was developed in Europe. The centre of which was no longer Mediterranean Sea, so important for the existence of the Roman Empire (Heather, 2012, pp. 63–122).

Mass immigration, especially its size, provokes all kinds of discussions, it creates political decisions and reveals the real social attitudes. The European society is polarized on the basis of the criterion of reference to immigrants. In Poland and in many European countries is slowly gaining an advantage by those who have a negative attitude towards immigrants.

One of the key and very controversial decisions, taken by the European Commission on 14th September 2015, is the decision about the relocation of immigrants in the various Member States on the basis of quota criterion. The greatest burden of the costs of the operation was taken by Germany, which from planned to allocated a group of 120 thousand immigrants, has committed to adopt 31,443 of them. But some of the Member States, especially countries of the Visegrad Group, refused to accept migrants or reduced their number to a symbolic amount. Poland had initially accepted a number of 9 287 immigrants. The current government, formed after elections in 2015, backed from this commitment[1].

Many politicians from different Member States, including the Polish politicians, raise arguments aimed to justify their negative attitude towards immigrants. Among others problems, they talked about the cultural differences, possible terrorist threats, the rise in unemployment and crime. It creates the same negative stereotype of migrants while resurrect the ghosts of the past, especially nationalism or hidden racism.

The results of sociological studies that have been conducted on high school graduates in the school year 2015/2016 in Otwock County may be the proof of the birth of negative attitude towards immigrants in Poland may be it was a group of more than 500 high school graduates. Almost 90% of respondents definitely had a negative attitude to immigrants, although 70% of them have never met a foreigner. The result of this study is a classic effect of creating in the media and by the policies of the negative stereotype image of the immigrant[2].

It need to be said that the human history is largely the history of the great migration. Just to mention the march of armies of Alexander the Great from Greece through India to Egypt. This event completely changed not only politically, but also culturally contemporary world. It was the same with: the Romanization of the world by the ancient Romans, the invasions of barbarian peoples, awakening of the Arab world, which resulted in the Islamization of much of the world, the invasion of Genghis Khan on the medieval Europe,

the conquest of the Americas by Europeans and colonization of Asia, Africa and South America. In all these cases, there were winners and losers, not only in the militarily sense, but also in the culturally and politically sense. There have been the significant cultural and political changes in Europe, as it is exemplified by the multinational United Kingdom, France, the Netherlands and Belgium.

It also cannot be forgotten, that Polish people, during last two centuries, emigrated very often. During the Partitions of Poland, our countrymen moved to the USA, Brazil or Argentina. After the World War II, we can notice the several waves of Polish emigrations which were directed to the United States of America, the United Kingdom, France, Italy, the Republic of the South Africa, Australia or lately to Germany. In 2014, there were 2320 thousand of Polish people living outside of Poland: in Great Britain – 685 000, in Germany – 614 000, in Ireland – 113 000 and in Holland – 108 000[3]. In all these cases, Poles generally been well received and quite quickly succumb to the process of assimilation.

The above data shows that the Poles, who are also immigrants should not be too easy to succumb to stereotypical thinking. The science should be free of emotional or political inclinations of any kind. For science it is fundamental to answer the question not about whether Europe should accept refugees, but how many can we accept them in order to be able to respect the human rights of refugees. In particular, such rights as the right to decent living conditions, education and preserve their own cultural identity. It is also important to determine the potential of Europe or otherwise, what is the capacity of Europe or its ability to infrastructure and economic admission. Too many immigrants may cause failure of state institutions in many countries and the EU institutions. As a consequence, it can reach to numerous abuses, like the known cases of harassment of women in Germany or trafficking in persons especially children of migrants.

However, it is necessary to realize that an immigrant is above all a person who enjoys all human rights. He or she only had the misfortune to have been born in the wrong place or wrong time. As a result, they are forced by various exogenous reasons to leave their place of birth or residence. These factors include the risk of loss of life, extremely poor living conditions, restriction of freedom, or the threat of losing their own cultural identity, for example – being forced to change their religion.

1. The right of migrants to live

Life is one of the most fundamental value for each person. Since so long, the migration movements are connected and related to the different local armed conflicts. Currently, Asia and Africa are the main places of those conflicts. Those conflicts usually explode in areas rich in natural resources, for example: Iraq, northern Kenya, Zaire and Venezuela, or in countries strategically important due to the running of their trade routes, for example: Afghanistan and Syria. In these circumstances, civilians inevitably meet with the threat of life from the part of the local paramilitary, the terrorists or from the US troops and the people faithful to the governments of individual Arab states. Media reports about the use by ISSI terrorists of civilians as human shields during the military activities. It cannot be, therefore, surprising that more and more civilians decide to sell everything and run into these areas, which are free from the war and life-threatening. In such situation, Europe is the ideal target.

The migrant as a human being is therefore entitled to live in the same conditions as other people living in peaceful areas. The content of this right in both cases is the same. This is due to the fact that the right to life is the natural entitlement of every person to respect his or her existence. It is something special in compare to the existence of other beings of living matter. Hence, it is widely accepted that no one can illegally deprive life of the other person in the name of ideology or expand living space. In the Ten Commandments, a clear prohibition was formulated, which is - do not kill (Bułajewski, 2011, pp. 4-16). To this day, it is an essential and timeless religious commandment as the basis for the positive legal regulations (Becker, 2004, pp. 95 and the fallowing). The content of the prohibition of killing a man is not dependent on any factors, such as the legal status of man. Therefore, it also involves migrant fleeing in danger of his life.

The right to live was many times set down in different act of the international law, according to which, this right belongs to every person regardless of skin colour, race, language, sex, the material status, the social status, the education or the religion (Wedel-Domaradzka, 2008, pp. 524–525). In the article 2, paragraph 1 of the Convention of 1950, it was stated that the human life should be secured by the legal act– it means by the legal regulation of the highest importance. In the article 6, paragraph 1 of the International Covenant on Civil and Political Rights decided that *Every human being has*

the inherent right to life. This right shall be protected by law. The human right is also protected in the article 2, paragraph 1 of the Charter of 2000. Also, the Polish Constitution, in article 38 says that *the Republic of Poland shall ensure the legal protection of the life of every human being* (Wojciechowska, 2008, pp. 535-541). The protection of human live is reflected in the Penal Code where the acts against human life are penalized.

The right to life is associated with a satisfying basic physiological needs of man, especially the hunger and thirst of water. The human history abounds with numerous examples of massive starvation as a result of which a lot of people died. An example can be artificially induced famine in Ukraine in the 30s of the twentieth century or the contemporary case of famine in Africa or Asia, most often caused by the local armed conflicts. Unmet needs of the individual or group can be an example of indirect stabbed in the right to life. It is clear that the obligation to satisfy this need lies with the interested parties and in its immediate environment, but based on the principle of subsidiarity, it also rests on the State and international organizations. Today there is a new need, it means - meeting mankind needs of drinking water, the lack of which is increasingly being reflected in the relationship with a lot of environmental pollution and the excessive population growth, especially in Asia. This obligation to meet this need rests primarily with state and international organizations.

On the background of the above presented issues, the question of practical implementation of the law in relation to migrants should be raised. Often, the escape from the place of armed conflict, fighting and the cultural or natural disaster - for example: long drought - it is the only chance of survival. These people are thus looking for a place where they can survive individually and collectively, both in the family or ethnic group. Reluctance to provide assistance faced by migrants in Europe, does not help them to fight for survival. The much better situation is experienced by those migrants who are part of the government or EU programs of assistance to migrants.

2. The right of immigrants to decent existence

The next important right of emigrants, directed related with the right to live, is the right to decent living conditions. This right is based on the human dignity. Even the standards of keeping the animals describe the problem level of their existents. All the more, the person – emigrant has the right to the proper – decent living condition in the new place of his or her existence.

The realization this condition, however, depends largely on the institutional and financial possibility of state or the European Union. The number of migrants should be proportionate to the capabilities of the host country. You cannot locate 100 emigrants in the home of the size of about 50 square meters because, neither the existing residents nor migrants do not have a chance to just normal operation, on the contrary, such a situation may generate new conflicts, even armed conflicts, such as those that took place in France 2005.

Decent living conditions of immigrants includes social conditions, and subsequently the right to social security. This is a group who needs special support because of the existing cultural differences, the lack of language skills, and local law. Immigrants often do not know the rules of the functioning of offices and the rules of making administrative decisions in the new place of residence. Thus, the host country is obliged to provide immigrants the meeting of needs in such areas as: the fight against poverty, orphanhood, homelessness and unemployment, the assistance to family or a pregnant woman and the medical or psychological help. The social assistance to immigrants should take preventive measures to protect them from drug addiction, alcoholism or other random events, such as losing the possessions as a result of theft or damage or loss at the time of immigration.

The social assistance for migrants should be undertaken primarily by the State authorities or bodies of the EU, which have the appropriate logistics and human means. However, in each Member State of the European Union, the Catholic Church, the Protestant Church or secular charity organization will participate in the providing of help (Miruć, 2008, pp. 630-638), (Nakielska, 2008, pp. 639-649). Above all, they must be systemic actions and activities.

All forms of social help and assistance must be based on the legal regulations and may occur in the following forms:

- ⇨ benefits;
- ⇨ educational scholarships for children;
- ⇨ co-financing of care;
- ⇨ housing allowances;
- ⇨ feeding;
- ⇨ purchase of rehabilitation equipment;
- ⇨ education community centres for adults and children combined with feeding.

The social assistance may be provided in the cash form (for example: financial aid, scholarships), the material form (for example: rehabilitation equipment, textbooks, meals) and the social services (for example: education or medical services). The forms of benefits and the circle of people entitled to receive them are determined by the legal provision or the internal acts of NGOs, for example - Regulations. The authority deciding on granting benefits in specific cases, should be guided by criteria of rationality and legitimacy. Therefore, the right to grant social assistance benefits may be limited by the legal regulations. The social assistance may be granted ex officio or upon request. It can be funded from the state budget, local budgets, earmarked funds as well as company social funds or own funds.

The emigrant in Poland, located in the migrant's centre run by the Foreigners Office, is guaranteed:[4]:

- ⇨ Accommodation,
- ⇨ Meals,
- ⇨ Reimbursement for trips by public transport in certain cases, related to the medical examination, the procedure for granting refugee status or in other justified cases,
- ⇨ Permanent monetary assistance for the purchase of personal hygiene goods in the amount of PLN 20 per a month and some spending money - PLN 50 per month,
- ⇨ A one-time cash assistance for the purchase of clothing and footwear in the amount of PLN 140,
- ⇨ Cash equivalent in exchange for meals for children up to 6 years of age and school children - 9 PLN per day.

In the case, when the emigrants live outside the migrant's centre, he or she may apply for the financial assistance if it is necessary from the legal or organizational point of view. The total amounts of this financial assistance in Poland are[5]:

The number of family members	Daily amount for 1 person	Monthly amount for 1 person
1 person	25 PLN (ca. 6,25 EUR)	750 PLN (ca. 187,5 EUR)
2 people	20 PLN (ca. 5 EUR)	600 PLN (ca. 150 EUR)
3 people	15 PLN (ca. 3,75 EUR)	450 PLN (ca. 112,5 EUR)
4 people	12,50 PLN (ca. 3 EUR)	375 PLN (ca. 93,75 EUR)

The data indicate that in Poland, the migrant maybe has not the best social conditions, however, they may receive cash or assistance allowing the survival and gradual organizing their lives on their own account, of course, in accordance with the law applicable on Polish territory. Similar solutions, with other rates, can be found in other Member States of the Union. However, the differentiation of these rates means that most migrants choose countries with high rates of social assistance for migrants, for example: Germany, France, Italy and the United Kingdom.

3. The right of emigrant to freedom and the security

Most of the emigrant coming to Europe during last two years are from the territories strike by the war. They are from: Syria, Iran, Afghanistan, Somalia, Chad etc. Quite often, they fled at the last opportune moment from the danger of death. For them, therefore, after the right to survival, and the right to get food and water, the most important is the right of security. It is for these people the fundamental value that allows them to relax mentally and physically after the roar of bombs or the noise of machine guns.

4. The cultural identity of the emigrants in the new environment

The arriving to Europe migrants come mostly from cultures significantly different from the European culture. Even if they are Christians, their lifestyle was adapted to the environment with the majority of Muslim culture. This is shown in the clothing, value system or in developing interpersonal relationships. In this perspective, it is necessary to develop a method of assimilation of immigrants into their new place of residence. It is also essential, on the one hand, to respect their beliefs while respecting the European system of values, including Christian values. It is necessary to develop a way of granting appropriate assistance to migrants, the effect of which is that they will find themselves in the world with a different perspective on life, with a different organization of life and often with a different value system.

The first cultural barrier encountered by the immigrants is the difference of language, the consequence of which is a communication barrier. In the case of immigrant people, especially children, the language barrier is possible to quite quickly overcome by learning in school or kindergarten. It is more difficult, however, proceeds teaching in the elderly. In addition, for children's education, the another obstacle is that at home they usually speak the language

of their parents and the new language is learnt by them only in school or kindergarten. This situation – the lack of knowledge of the language is not conducive to the integration process of immigrants with Europeans.

The next important issue is the method of integration. In many countries for example in Germany the migrants are located in the separate centre – often being a former military base. In other words, the emigrants are isolated from the new society, in which they are going to live in the future. Due to this situation, since the beginning, they feel as an enclave and isolated from the new reality which is strange for them and they do not identify with this new reality. After many years of isolation, the emigrants live in new environment in the same way as at the beginning and there is no change in their lifestyle.

An important issue is also to prepare immigrants to professions possible to perform in Europe. Much of the immigrants have no education or their education is inappropriate. This is indicated by data from Germany. According to them, 41% of immigrants has no education, 27% of them have secondary education, and only 11% higher education. Another issue is the usefulness of this training and education to work in the country of current residence. Often, there is a need to adjust them to exercise new profession, which is often equivalent with the necessity to perform a new long-term education.

Finally, there arises a problem of preserving the cultural identity of immigrants, but also a European cultural identity. This problem stems from the fact that almost 70% of the latest wave of migrants are relatively young men. In addition to few of them who has some relations with terrorist organizations, the most of others put his life in Europe. So, they are looking for European women. After the marriage, the European woman change their value system to the value system of her husband - a change of religion. Next, the upstream culture is extended on children coming from these relations. This leads to a cultural change in Europe in quite a good pace.

5. Conclusion

Immigration is one of the essential elements of human history since ancient times. The immigration resulted in political, cultural, social and even technological changes. The emigration of this in recent years is one those big historical immigration. Several million political and economic refugees had

moved from the Middle East to Europe. Thus, it has a lasting impact on the political, economic and social culture of many European countries. The first visible sign of this change is very strong resurgence of nationalist movements.

The immigrants create also many theoretical and practical questions, that need to be resolved. All of them are arranged along the line of human rights and these are fundamental ones such as the right to life, to guarantee of decent living conditions or the cultural issues on the side of immigrants and residents of Member States of the European Union. The immigrant is primarily a person who is entitled to the same rights as everyone else, regardless of skin colour, national origin or religion. This, however, raises the question about the possibility of organizational and financial support by the host countries which receive the immigrants. To keep them safe and to guarantee the decent living conditions, it is necessary far-reaching effort by the State and society itself. The data included in this study shows that it is not the problem easy to solve. The easier would be to take the very radical and extreme potions – it means to be open to the emigrants and to receive them with no limits but with the big risk of many negative consequences or to be totally closed to the emigrants. The middle path solutions are to help emigrants by the European Union State Members in the reasonable ways. This help must be wised and must be adjusted to the financial possibilities of those countries with no harm to their societies.

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Human rights and its attitude to immigrants

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Abstract

The essay deals with scientific approach the thesis of the unconstitutionality of the art. 16 of preliminary dispositions to Italian civil code in matters of "condition of reciprocity", in the light of the renewed national and supranational normative scenario which gave effect to the principles of equality, non–discrimination and equal treatment, which permeate the entire modern regulatory system. In fact, in contemporary reflection, it has consolidated the tendency to the harmonization of social and juridical fabric, which entails the full integration of immigrants. On this point, it is decisive the argument that each man has his own dignity, by virtue of his membership in the human race.

Keywords*:* integration, condition of reciprocity, treatment of the immigrant.

1. Introduction – Migrations as a remote phenomenon in the history of humanity. States' duty to respect ethnic and cultural differences between people

Migrations have strongly marked mankind's life since ancient times. In some books of the Old Testament (Book of Ruth; Exodus), for example, is told about Abraham's migration from the Land of Ur of the Chaldeans to the fertile land of the Crescent; as well as this, a migration from Bethlehem to Moab, as archaic episode posed at fundament of the lineage of Jesse; lastly, the migration of a population, stated as descending from Abraham, which moved to the borders of Egypt due to a severe famine. The phenomenon of migration, then, has ancient origins in the history of humanity (Pichierri, 2016, p. 288).

In democratic societies, based on participative principles, the common feeling of communities assigns to the State the duty of respecting ethnic and cultural differences between people who live within the national legal system,

in an attempt to exploit diversities in function of the *common good* (Pope Jean Paul II, 1994, p. 170).

This setting is rooted in the personal dignity, in the universal human rights and in the social duty of solidarity, which make ethically necessary the identity of the stranger and minorities protection (Pope Jean Paul II, 1994).

The transposition of this commitment into binding rules outlines the measure of the State's maturity and its ability to foster peaceful coexistence within its borders (Pope Jean Paul II, 1994, p. 171).

2. Foreigners' legal status: freedom rights and the condition of reciprocity

From an historical point of view, the Italian Civil Code of 1865, ideologically opposed with the Napoleonic Code of 1804, adopted the principle of foreigner's complete assimilation to the citizen, rejecting the proposal to make the condition of foreigners subjected to the constraint of the residence in Italy (Giardina, 1978, p. 25).

Nowadays, in regulating the complex phenomenon, the Italian Constitutional Charter provides that the legal status of foreigners «Is regulated by law in accordance with rules and international treaties» (art. 10, sub. 2, Italian Constitution) (Parente, 2012, p. 73; Mazzoni, 2009, p. 109; Stanzione, 2009, p. 488; La Torre, 2009, p. 339).

Due to the configuration of freedom rights (art. 13 ss. Italian Constitution) as limit to the «sovereign function of legislative power», referring to the citizen and the foreigner, the principles of the Italian Constitution doesn't constitute the expression of a «legality greater than that of ordinary law», but rise to fundamental principles, that cannot be subverted in their essential core «even with the constitutional revision process» (art. 138 Italian Constitution) (Tucci and Di Muro, 2003; Ferrajoli, 2001, p. 298; Gozzi, 1999, p. 197; Rodotà, 1997, p. 97; Baldassarre, 1989, p. 17)[1]. Indeed, they belong «to the essence of supreme values from which the Italian Constitution and the entire legal system draw legitimacy» (Tucci and Di Muro, 2003).

In the current Italian law, however, the protection of the stranger is limited by the art. 16 of preliminary dispositions to the Italian Civil Code (Parente, 2012, p. 74; Parente, 2008, p. 1115; Perlingieri, 2005, p. 89), which admits the foreigner to the enjoyment of civil rights allocated to the citizen «on

condition of reciprocity and without prejudice to the provisions contained in special laws» (Stanzione, 2009, p. 488–489; Parente, 2008, p. 1115; Cianci, 2007; Santoro–Passarelli, 2002; Calò, 1994).

3. The process towards achieving equality between residing foreigners and citizens. Italian Consolidated Law on Immigration

Actually, the application area of the condition of reciprocity, circumscribed to the enjoyment of civil rights, referring to the stranger, appears to be resized by the republican order's values (Parente, 2012, p. 74; Campeis and De Paoli, 2001, p. 192; Campiglio, 2001, p. 45; Di Raimo, 1990, p. 652)[2] and seems to lose importance in the Italian Consolidate Law on Immigration (Legislative Decree 25 July 1998, n. 286 and subsequent amendments) (Parente, 2008, p. 1117; Costanzo, Mardeglia and Trucco, 2008; Nascimbene, 2004; Corsi, 2001; D'Auria, 2000, p. 764; Di Maio, Proto and Longarzia, 2000; Martellone, 2000; De Vincentis, 1999; Miele, 1999; Sonetti, 1998, p. 137; Memmo, 1998, p. 941; Nascimbene, 1998, p. 421; Nascimbene, 1998, p. 1), that, as a result of diachronic changes (Italian Republic Presidential Decree 31 August 1999, n. 394), extended the benefit of the exemption from the assessment of the condition of reciprocity, originally reserved for foreign citizens holders of residence card or recipients of residence permit for reasons of work, to foreigners with a residence permit for family, humanitarian and study reasons (Parente, 2012, p. 74)[3].

The aim to reach the substantial equality between foreigners residing legally and citizens can easily be noticed by art. 3, sub. 5, Consolidate Law, which assigns to regions, provinces and municipalities the task of adopting, within the scope of their respective powers and budget allocations, measures designed to pursue the objective of removing obstacles which hinder the full realization of the rights of foreigners in the territory of the State, with particular regard to those inherent in the accommodation, the language and the integration. The multiple intervention measures, especially in the context of social–welfare (public and facilitated residential building, cultural activities, support for the right to study, interventions for public services and access to public administrations), must be taken by the public authorities closely to the recipients of the measures, in accordance with the criteria of subsidiarity and adequacy foreseen by the art. 118 of the Italian Constitution (Parente, 2012, p. 81, note 302).

Despite this effort, many rules contained in the Consolidated Law are strongly characterized by parameters that make it difficult to reach the effectiveness of the right to equality of treatment between the citizen and the stranger: for example, the rules on the prevention of racist and xenophobic behaviors in private relationships (art. 43 and 44 Italian Consolidated Law on Immigration), and the provisions of principle provided by art. 42 of the Consolidated Law, in the field of information and cultural actions and of the promotion of cultural mediation and foreigners associations (Parente, 2012, p. 80, note 300; Nascimbene, 2004, p. 142).

4. Regularity of resident status

In fact, holding of rights that are provided by the law to foreigners is subjected to regularity of his position. Residence permit, indeed, on the one hand legitimate the immigrant to stay in the State's territory in a not precarious condition, for specific purposes and predetermined periods; on the other hand, allows a constant police force control, in a preventive function, either at the moment of release, withdrawal or renewal, and subjecting the foreigner to some submissions which oblige him to exhibit the permission at any time while requiring public administration organ's services (art. 6, Italian Consolidated Law on Immigration) (Parente, 2012, p. 81–82, note 304).

Issuing a permit requires a procedure with a very short timescale (art. 5, sub. 9, Italian Consolidated Law on Immigration) and obliges the administration, pending the release, to provide transitional instruments that allow the immigrant to reside in the Italian territory. In this regard, the Italian Interior Ministry, on 20 February 2007, issued a directive concerning foreigner's rights, in response to requests received by the Department for civil liberties and immigration, related to the possibility for non–Community workers to work pending the issue of firs residence permit, and to exercise related rights. To access at benefits, foreigners – who have already submitted applications for permit obtainment to the one–stop center for immigration within eight days before the entry into national territory and subscribed the residence contract – must be in possession of a copy of the request template, issued by the one–stop center, and of the receipt certifying the successful submission of the application (Parente, 2012).

If the permission is refused, the foreigner doesn't have the power to intervene for exercise rights usually provided in administrative procedure (Law n. 241 of 1990, emended by Law n. 15 of 2005), nor can be informed of the procedure start or intervene to expose its own reasons. Withdrawal or refusal measure, in fact, takes the form of a police measure and is communicated to the stranger, with a summary of its contents, in a language understandable to him (Parente, 2012).

5. Expulsion and personal freedom limitation measures

Although the immigrant may submit to the Quaestor written pleadings and documents, that the administration has the duty to assess (art. 10, sub. 1, let. *b*, Law n. 241 of 1990), it can hardly know all the acts and documents in the possession of the police headquarters, so that its memories are often inconsistent with the reasons which justify the non–renewal or refusal of permission; and since the law doesn't provide for a specific legal protection against the revocation, annulment or refusal of permission, detrimental effects of refusal in labor relations, family life and social relationships are sometimes irreparable.

In accordance with art. 10, 13, 14, 15 e 16, Italian Consolidated Law on Immigration, towards the stranger present on the territory of the State removal measures can be taken (refoulement, administrative expulsion, expulsion as security measure, expulsion as replacement or alternative of detention) and special measures restricting personal freedom, preparatory to the actual implementation of the first (detainment in temporary centers). In addition, pursuant to art. 6 sub. 5, Italian Consolidated Law on Immigration, the public security authority, «when there are well–founded reasons », has the faculty to ask foreigners precise information and the submission of documents proving the availability of an income from work or from other legitimate sources, sufficient to sustain their own and the members of their family residing in the territory of the State (Parente, 2012, p. 83, note 306; Nascimbene, 2004, p. 96–97; Caputo, 1998, p. 998).

From the point of view of the comparison with the position of the citizen, therefore, the *status* of foreigner suffers from an objective condition of inferiority, which justifies the attempts of repeal of the art. 16 of preliminary dispositions to the Italian Civil Code.

6. The express repeal of reciprocity condition lack and the silent repeal theory

In the absence of express repeal, the prospect of a tacit repeal seems precluded from an *a contrario* interpretation of art. 39, Italian Consolidated Law on Immigration, which envisages the provision of scholarships, grants and awards for foreign students, without obligation of reciprocity (Parente, 2012, p. 84, note 310).

Likewise, the tacit repeal may be denied in the light of the art. 37, Italian Consolidated Law on Immigration, which doesn't allow residing legally foreigners to access to professional activities, on equal terms with Italian citizens, restricting access to professional activities to quotas defined by an annual decree of fluxes determination for the input streams for job, which sets maximum employment percentages, in accordance with the criteria laid down in the implementation rule.

A further not–repealing induction can be set aside art. 35, Italian Consolidated Law on Immigration, which is without prejudice to provisions concerning sanitary assistance to foreigners on the basis of treaties and bilateral or multilateral agreements of reciprocity, signet by Italy (Pastore, 1998, p. 1090).

The same national legislation implementing the Directive 2000/43/CE, on equal treatment (Legislative Decree 9 July 2003, n.215), which also dispose «measures necessary to ensure that difference of race or ethnic origins should not be cause of discrimination» (art. 1), presupposes the lack of a tacit repeal, where specifies that is «without prejudice to provisions of Article 43, sub. 1 and 2, of consolidated law of dispositions concerning the discipline of immigration and rules on the condition of foreigners, approved by the legislative decree 25 July 1998, n.286» (art. 2, sub. 2) and that «the present legislative decree doesn't cover differences of treatment based on nationality and is without prejudice to national provisions and conditions relating to the entry, stay, access to employment, to the assistance and social security of citizens of third countries and stateless persons in the territory of the State, and to any treatment, adopted on the basis of the law, which arises from the legal status of such entities» (art. 3, sub. 2) (Parente, 2012, p. 85, note 310).

7. The reduction of reciprocity parameter's scale in supranational sources evolution. State' duty to ensure effective participation of migrants in the life of the Nation

On the systematic plan, the evolution of supranational law has helped considerably to reduce the flow rate of the reciprocity parameter (Parente, 2008, p. 1118). In fact, the international human rights conventions, welcoming the prospect of the recognition of person's fundamental freedoms, have defined the discretion sphere of the States (Tucci and Di Muro, 2003, p. 180–181).

Also the equivalence of treatment for all citizens of Member States of European Union[4] and the impact of principles of non–discrimination and equal treatment reduced the scope for action on the condition of reciprocity (Parente, 2008, p. 1120).

Under these assumptions, appears well–founded suspicion of constitutional illegitimacy of the art.16 of preliminary dispositions to the Italian Civil Code in relation to art. 2 and 3 of Italian Constitution (Parente, 2012, p.87).

In conclusion, the world of migrations requires individual commitment to hospitality and solidarity in order to promote the integration of foreigners, but demands also the State to guarantee the effectiveness of the participation of migrants in the life of the nation. This participation is not only a fundamental human right, but also the tangible sign of a society culturally mature and morally right (Pope Jean Paul II, 1994, p. 171).

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Endnotes

[1] On fundamental rights intangibility, cf. Cost. Court, 29 December 1988, n. 1146, in *Foro it*., 1989, I, c. 609.

[2] Some authors (Barile, 1984, p. 32–34; Cassese, 1975, p. 512–515; La Pergola, 1961, p. 32–34) offers the thesis of tacit repeal of the art. 16, preliminary dispositions to the Italian Civil Code, operated by art. 10 of the Italian Constitution, expected that international standards, general and conventional, which must be complied by the law on the legal status of foreigners, doesn't contemplate the reciprocity clause, nor the preparatory work of the Italian Constitution leave infer the intention of Constituents to remove the condition of reciprocity. In particular, Cassese (1975, p. 514) argues that the condition of reciprocity was eliminated, but the art. 10 of Italian Constitution don't prevent the ordinary legislator to include it in the laws which authorize ratification of specific international treaties, where this is deemed reasonable; and also Giardina (1978, p. 38) notes that in the field of person's fundamental rights, the art. 2 of Italian Constitution exclude some distinction of treatment between citizens and foreigners, even if based on the criterion of reciprocity. A different orientation (Pace, 1990, p. 145) considers that the reciprocity clause is in accordance with the art. 10, sub. 2, Italian Constitution, which confines itself to shape the discipline of the treatment of the stranger to ordinary law, in compliance with the provisions of international law. In accordance, cf. Focarelli (1989, p. 825). The jurisprudence of the Italian Supreme Court (Cass., 10 February 1993, n. 1681, in Di Francia, 2006, p. 7). On the point, the Court of

Monza, 8 May1998, in *Danno e resp*., 1998, p. 927, stated: «the fundamental rights recognized by the Constitution to every human being without distinction are not subject to the condition of reciprocity referred to in art. 16 of general provision on law. This condition is, however, satisfied all the times in which the examination of the legislation of the Member State of affiliation of the stranger that invokes justice in Italy shows that this agreements to an Italian citizen, without discrimination, adequate safeguard and protection of the right which is actuated, by the recognition also in his favor of the operation of legal institutions of a substantial nature, similar to those existing in our sorting, without it being necessary to experience an absolute superimposition of the legal forms placed in concrete as a garrison of position so recognized».

[3] On stages which have gradually led the legislator to widen the scope of the stranger's rights, cf. Nascimbene, 2004, p. XXXI–LIV.

[4] The recognition of European citizenship added more rights to *status personae* and strengthened the rights of European citizens, thanks to «a *citizenship Europeanization* process», that suggest a hypothetical transition from national citizenship to a «post–national citizenship» (Zanfrini, 2007, p. 67; Alpa, 2006, p. 36–37). Before the Treaty of Lisbon on 13 December 2007, immigration, visas, asylum and policies related to the free movement of persons was regulated in the Treaty of Amsterdam of 2 October 1997, in force since 1 May 1999. The provisions contained in the Treaty realized a genuine area of freedom, security and justice in which Member States are obliged to comply with the principles and the aims proposed by the Community policy (cf. AA.VV., 1999, p. 257). To the creation of an area of persons free movement within the Community area was dedicated the Tampere European Council (15 and 16 October 1999), in which they were identified some priority objectives, among which the fair treatment of nationals of third countries legally resident in the territory of the Member States of the Community (cf. Presidency conclusions, accompanied by the presentation of Balboni, 1999, p. 205). In the sphere of the communitarian legislative production aimed at the uniformity of treatment, there are numerous regulations and directives that protect the rights of the stranger: Dir. 2 September 2003, n. 2003/86, in *G.U.U.E.*, L 251 of 3 October 2003, in the field of family reunification; Reg. 13 June 2002, n. 1030/2002, in *G.U.C.E.*, L 157 of 15 June 2002, which has established a uniform format for residence permit; Dir. 29 June 2000, n. 2000/43, in *G.U.C.E.*, L. 180 of 19 July 2000, which implemented the principle of equal treatment between persons irrespective of racial or ethnic origin, as well as the free movement; Com. L. 1° February 2002, n. 39, in *G.U.* 18 August 2003, n. 186, Gen. Ser., transposing Dir. n. 2000/43. On European citizenship, cf. Santoro, 2007, p. 35; Daniele, 2000, p. 13; Mattera, 1998, p. 431; Adam, 1992, p. 622; Parente, 2007, p. 1118–1120.

Contemporary challenges in the area of shared management of the external borders of the European Union

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Abstract

For the last two years the problem of security on the European Union's external borders has become more and more important. In 2014, more than 276.000 migrants irregularly entered the EU – an increase of 159% compared to 2013. In 2015 detections of irregular border-crossing along the external borders already reached 1.820.000. This is over six times more than the number of detections in 2014. To enter the European Union via land, air or sea, most migrants turned to criminal networks of smugglers. At the same time the European Union's external borders have also increasingly been the scene of human tragedies. We can notice that the migration in the European Union needs to be better managed in all its aspects and shared responsibility.

In May 2015 the European Commission proposed the European Agenda on Migration. One of the most important aims of this programme was securing the external borders. This involves better management of the external border, in particular through solidarity towards those Member States that are located at the external borders and improving the efficiency of border crossings.

On 15 December 2015, the European Commission adopted an important project of a new regulation – set of measures to manage the EU's external borders and protect the Schengen area without internal borders. The aims of this proposal are, among others, to help to manage migration more effectively, improve the internal security in the EU and safeguard the principle of free movement of persons. One of the main elements of the new system will be the European Border and Coast Guard – to ensure strong and shared management of the external borders.

The aim of the article is to indicate the most important ideas of the proposal for the shared management of the EU's external borders. First of all, the article critically examines the Commission's proposal for the establishment of the European Border and Coast Guard.

Keywords: EU external borders, management of the external borders, European border guard.

Introduction

The conception of the shared management of the external borders of the European Union is connected with the European migration programme. European Union has been building the foundations and an overarching and comprehensive migration policy for almost twenty years.

At the beginning, Justice and Home Affairs were strictly a national competence. After entering info force of the Single European Act in 1987, competences in this field gradually shifted to the European level as well. Justice and Home Affairs were increasingly formalised and the European decision-making process has been put in place since the 1990s. One should remember that several aspects of that policy still remain a shared competence – on the European and the national level. The Lisbon Treaty in 2009 marked the new "community model" to the area of Justice and Home Affairs.

1. The evolution of the system of the external borders management

In the context of intensified migration movements in the direction of the external borders of the European Union during the last two years, the protection and management of external land and sea borders of the European Union is of particular importance. These borders are in fact the most common ways of transfer of illegal immigrants from third countries.

The creation of the Schengen area (in 1995) was associated with a shift of responsibility for ensuring the security of the territory and population of all the countries making up the zone on its external borders. The supervision of individual sections of the external border remains the sole responsibility of the competent authorities, bodies and departments of each country (see art. 6 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239 , 22/09/2000 P. 0019 – 0062). It should be noted, however, that border control does not remain solely in the interests of the Member State on whose external borders it is carried out. It is in the interest of all Member States which have abolished border controls at internal borders. The current form of cooperation between the Member States in the field of management and in particular the protection of the border, constituting a common external border of the European Union, is the result of a long debate and long-term arrangements at various levels.

The idea of an integrated management of external borders was formulated by the European Council in Laeken on 14–15 December 2001. This idea was related to the need for sharing of responsibility and financial solidarity with countries outside the EU, potentially exposed to the strongest immigration pressure. The idea of an integrated management of the external borders of the EU was to take into account both the demands of countries with external borders of the EU, as well as those that border only with other Member States. The need to ensure the safety of the EU territory without creating the barriers to trade and movement of people was most frequently indicated as the main problem of the practical implementation of this concept (Hobbing, 2005, p. 1). The concept of integrated management of external borders and defined principles for cooperation between the Member States in this field was developed in the Communication from the Commission to the Council and the Parliament of 7.05.2002: Towards integrated management of the external borders of the Member States of the European Union. The key element of the proposed system was to be the adoption of common regulations relating to border controls and standards of border management (Burski, 2013, p. 5). At the same time, the Commission's idea of creating the European corps of border guards was presented (Monar, 2005, pp. 145–164). The increased security of the entire EU territory and the distribution of costs related to border management between all the Member States were emphasized as the main advantages of this approach. The main issue arousing controversy was, in turn, entrusting the border protection to persons who are not citizens of the country. In this context, it was decided to start on the creation of a network of liaison officers of border guards of the Member States and the introduction of joint controls at airports and seaports. However, the very idea of establishing a European system of border guards never fell as a long-term policy option (Parzymies, 2002, p. 41; Carrera, 2010, pp. 1–7).

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – FRONTEX has finally become the effect of multi-faceted discussions between the Member States of the European Union (Jorry, 2007, pp. 5–9; Hobbing, 2006, pp. 169–192). The Agency began its formal operations on 1st May 2005, but actually on 3rd October 2005 on the basis of the Regulation (EC) 2007/2004.

Its creation was a crucial step towards an integrated management of the external borders of the Union (Papastavridis, 2010, pp. 75-111). Founding

FRONTEX, however, is not a final solution in the area of protection and management of external borders. The concept of establishing a European system of border guards / European border guard corps, is still present in the discussions in various institutions. Its founding was, for example, one of the key proposals of the Stockholm Programme, adopted by the European Council in December 2009. It also appeared in the Commission's work programs (in particular, for example, the EU Commissioner for Home Affairs – Cecilia Malmström (2010–2014).

According to the FRONTEX's mandate, it was tasked with the promotion of an integrated approach to border management, through conducting risk analysis, drawing up training plans for border guards, or carrying out research. FRONTEX also coordinates joint border management operations and organizes return operations. Its role was strengthened over next years.

In 2007 the Rapid Border Intervention Teams (RABIT) were established, coordinating the national border guards deployed outside their own member state. Every member state in a crisis situation can request the deployment of RABITs border guard assistance for a limited period of time. Still, this mechanism was used rather rarely, for example: in 2010 on the Greek- Turkish border, or in 2016 on the Aegean Sea.

The role of the FRONTEX agency was further reinforced in 2011 (by Regulation (EU) 1168/2011) by the creation of the European Border Guard Teams (EBGT). They could be used for joint operations and rapid border interventions. Simultaneously, the surveillance capabilities of FRONTEX were enhanced by the creation of the Situational Centre. It provides a regularly updated picture of EU's external borders and migration situation. The next important step was the establishment of the European Border Surveillance System (Eurosur). FRONTEX may also conclude working arrangements on the management of operational cooperation with the third countries, send liaison officers to third countries and launch technical assistance projects in non EU countries. Finally, FRONTEX played a leading role in the creation of 'hotspots', Migration Management Support Teams. These teams play a double role. Firstly, they coordinate the European Asylum Support Office (EASO), Europol, FRONTEX and national authorities in the area of identify, screen and register migrants on the external border of the EU. Secondly, they help to coordinate actions in organization return operations.

Despite certain successes, functioning of FRONTEX turned out to be insufficient for the effective protection of the external border of the EU. In 2014, more than 276.000 migrants irregularly entered the EU, which represents an increase of 159% compared to 2013. In 2015, detections of irregular border-crossing through the external borders reached 1.820.000. This is over six times more than the number of detections reported in 2014. This put border authorities under big pressure, especially Greece, as the two main entry points were reporting up to 6.000 arrivals per day. For several other member states large scale inflows of migrants and asylum seekers was also a new experience. In response, 7 of the 26 Schengen countries (Germany, Austria, Sweden, Slovenia, Hungary, Norway, France) temporarily reintroduced controls on at least some of their borders, to manage increasing flows of migrants (Article 29 Schengen borders code).

The experiences of the last two years show that the Schengen area without internal borders is only sustainable if the external borders are effectively secured and protected. In this context the idea of pooling resources by setting up the European Border and Coast Guard system was revived.

2. The European Border and Coast Guard system

The European Commission's Communications on a European Agenda on Migration (COM (2015) 240 final) and on Managing the refugee crisis (COM(2015) 510 final) numbered some guidelines for a new conception of shared managing the EU's external borders. On 15 December 2015 the Commission came forward with the Proposal for a Regulation on the European Border and Coast Guard (EBCG) as a new instrument for ensuring the protection of the EU's external borders. According to the Commission's Communication, the purpose of the Regulation was both: improving the management of migration and ensuring internal security within the European Union.

The Commission proposed several changes in the existing system of coordination on the EU external borders. The new system of the European integrated border management, according to the European Commission, should consist of eight interrelated components – from effective border control related to the prosecution of cross-border crime, through the analysis of the risks for the internal security of the Schengen area and the analysis of threats to the EU's external borders, to organizing return operations for

third-country citizens who are illegally staying on the territory of the EU. Each of these actions at the EU level is to be supported by, among others, inter-institutional cooperation with the national authorities of the Member States and third countries (in particular neighboring countries and the so-called transit countries).

The main changes in the new system should relate to: firstly, the creation of the new European Border and Coast Guard Agency with expanded competences, compared to FRONTEX, and secondly – to introduce systematic, constant monitoring of all persons crossing the borders of the Schengen area – the citizens of the EU (which is related with the changes in the Borders Code).

The European Border and Coast Guard Agency is to be a key link in a new system of management of the external borders of the European Union. It has to work closely with the competent authorities of the Member States, responsible for the ongoing management of individual sections of the external border of the European Union in the framework of a European border and offshore guard.

The Commission proposal foresees several areas of activity of the new European border and offshore guard. First, it is to have a monitoring and oversight role. In practice, it is intended to carry out assessments of the capacity of Member States to meet the challenges in the field of conservation and management of its part of the external border of the EU. Such monitoring takes into account, for example, possessed equipment and personal resources of the Member States. Within the above-mentioned function, it is also planned to establish the centre of monitoring and risk analysis. Its task will be to monitor migration flows across borders outside the EU, as well as through internal borders and to conduct the analysis of potential threats. In its risk analysis the Agency will also take into account the problem of cross-border crime and terrorism.

Liaison officers, whose task will be to support the site of the emergency borders, are to be deployed to individual Member States. In case when the assessment of operational capacity, technical equipment or other resources of Member States done by the European Border and Coast Guard Agency was insufficient, the Agency may require the Member States concerned to take remedial action.

The European Border and Coast Guard Agency, on the basis of the proposals of the European Commission, is also to be equipped with the right to

intervene. The Member States may submit to it proposals for joint operations and rapid intervention at the borders and to support these operations by the European Border and Coast Guard Teams. In case when, for example, a Member State finds itself in a situation of extraordinary increase of migrants, threatening the Schengen area, and the national action would be insufficient, the Agency will be able to use the support of the European Border and Coast Guard Teams in order to provide on-site activities. It will be possible also in a situation when a Member State will not be able or will not want to take the necessary measures. It is important, however, that an executive decision would have to be made by the European Commission. This decision should specify that the situation on a particular section of the external border requires urgent action at European level.

Another area of competence of the new Agency will be supervising the coastguard. The National Coast Guard is to become the part of a European border and coast guard that performs tasks of border control. The activities of the new European Border and Coast Guard Agency will be linked, among others, with those of the European Fisheries Control Agency and the European Maritime Safety Agency. These agencies will be able to take joint actions in the field of monitoring and surveillance (eg. the use of drones in the Mediterranean). An important issue is providing the Agency a mandate to conduct operations in neighbouring third countries. The Agency will be able to send there liaison officers, as well as participate in joint activities, including third countries.

The project submitted by the Commission is planned to further extend the tasks of the new European Border and Coast Guard Agency. They are to cover, among others, setting up and deployment of European Border and Coast Guard Teams for joint operations and rapid border interventions, setting up a technical equipment pool, assisting in coordinating the activities of the migration management support teams at hotspot areas, training and research. The human resources of the Agency will be reinforced by the constitution of a rapid reserve pool which will be standing corps composed of a small percentage (2% – 3%) of the total number of border guards in the member states to a minimum of 1.500 border guards. These corps will be placed at the disposal of the Agency and should be deployable from each member state within three working days.

The European Border and Coast Guard Agency will have a stronger role (the coordination and organization) on return operations and return

interventions from one or more member states. A new Return Office will be set up in the structure of the Agency. It will be responsible for the European Return Intervention Teams composed of escorts, monitors and return specialists. The Agency will also provide national authorities more efficient and cost-effective multipurpose services carrying out coast guard functions in cooperation among the European Border and Coast Guard Agency, the European Fisheries Control Agency and the European Maritime Safety Agency.

Another element of the new system is the introduction of the concept of systematic checks on persons crossing the external borders of the Schengen area which is to cover (as it should be stressed) both entering and leaving people. Mandatory checks will also include EU citizens crossing any kind of external border: land, sea and air. The Commission proposed that they should be carried out on the basis of available databases, such as SIS, Interpol database (database of stolen or lost travel documents) and the related national databases of Member States. The purpose of the control is to verify whether passengers do not pose a threat to public order or public security for the Member States of the European Union. In the projected submitted in December 2015 the European Commission stressed the need for the verification of biometric identifiers in passports of EU citizens. The necessity of such a concern would be in cases of doubt concerning the authenticity of the passport or the identity of the person who uses it.

3. Conclusions – the evaluation a new concept of the European border and coast guard

According to legal analysts (Rijpma J., 2016), the provision of the right to intervene may exceed the EU's powers as framed in 72 TFEU (the Treaty '*shall not affect the exercises of the responsibilities incumbent upon the Member States with regard to the maintenance of law and order and the safeguarding of internal security*') and Article 4(2) TEU (the EU should to respect '*essential state functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding internal security*'.) According to this interpretation, the EU can establish rules on border controls and regulate how the authorities of the member state implement them. On the other hand – the EU cannot replace member states' powers of coercion or control, or require from the member state to carry out a particular operation.

Some experts also point out that an increase in FRONTEX's competences and tasks will not be sufficient to remedy the structural deficiencies in the external border management systems in some member states (Carrera S., den Hertog L., 2016, pp. 1–5). The commentators also point out that the new European Border and Coast Guard Agency (a "reinforced" FRONTEX) would not be fully effective unless the structural and administrative capacities of the member states will be stronger and comply with the EU border and asylum standards. In literature we could also find the statement that the reinforcement of the FRONTEX mandate should be accompanied by a fundamental change in the current EU Dublin system (E Guild, C Costello et al, 2015, pp. 33–43; Rijpma J., 2016, pp.29–33; Carrera S.,den Hertog, 2016, pp.13–16;2016).

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Non-political factors of migration crisis

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Abstract

Contemporary migration crisis is perceived in the context of the armed conflict in the Middle East and exacerbating worldwide political and economic problems. These are certainly important reasons resulting in displacing of considerable number of people, with whom the Old Continent cannot cope with. As the matter of fact, causes are much more complicated. In many cases they result from changes in human environment, usually determined as climate change. Most often it is related to serious long-term phenomena, which are gradual and hardly noticed for one generation.

However, in the media sphere, there are noticed almost exclusively the spectacular and impressive ones, such as floods and droughts. All of them "produce" millions of people, who need new houses, jobs, livelihood. The scale of this phenomenon outgrows previous predictions and this situation is aimed merely at sensitizing individuals to the problems of other people. An effective solution in bringing material help is provided neither by the international community nor the international law.

Keywords: climate change, climate migrants, international law.

Introduction

Climate change and more or less related with it perceptible extreme weather phenomena in almost all regions of the world lead to the formation of frequent unfavourable conditions. The consequences of this are migrations of people. The mass movement may cause social conflicts or even the armed ones. It can be confirmed in reality. There are suggestions, that several years of drought in the Middle East led to the outbreak of the revolution in Syria, and consequently to the immigration crisis in Europe. Formerly fertile lands, because of the lack of rainfall and low groundwater levels, became less efficient. This resulted in the escape of thousands of people from the

villages to the cities in order to look for works. They joined still too large number of habitants living in poor suburbs of bigger cities, where finding job was difficult considering previous refugees from Iraq. In view of the difficult material situation it is easy for social tensions and conflicts. Anti-governmental protests rapidly escalated into a civil war, which devastated many cities. Many of them abandoned their previous lives and are looking for better future in Europe.

The consequences (at least some of them) of mass movement of people in part we already know. Much more difficult and more complex are causes of these events. Sometimes they are obvious and well-known, sometimes – concerning distant future and only probable, pluricausal and to some extent provoked by the economic activity of humans. The rest is made by the nature itself. Here, a man cannot do much – only bear the consequences and find the way to survive.

1. Climate change – ecologic and economic consequences and conflicts

In the recent years, we can observe the changes of considerable importance for the Earth's climate system, which consists of various marine, water and land ecosystems shaped by such factors as solar activity, volcanoes or ocean currents. As the climate change we understand all the modifications that occur in the atmosphere of a planet (both at the local and global level) observed due to deviations of temperature values, amount of rainfall, cloudiness, quantitative and qualitative changes in fauna and flora. Some of them are attributed to the transformative activity of human beings (Cel, Czechowska-Kosacka, Zhang, 2016, s. 173-176).

The climate change and the resulting environmental stress, apart from causing direct changes in a given area, and thus causing changes in the conditions of inhabitants, may contribute to fierce conflicts, which can make this difficult situation worsen. This happens because climate change reduces such primary resources as food, water, energy, which are indispensable for life. People experiencing such decline in availability of these resources can adopt the accommodative strategies, they can become involved in conflicts to take control over limited resources or abandon everything in order to find more favourable places. This movement usually inflames already difficult situation in destination places, which results in new conflicts.

2. Natural environment – effects of degradation

Difficult situation concerns Sub-Saharan African countries affected by rapidly progressing desertification of formerly agricultural regions. Increasingly rare precipitation considerably reduced harvest and the variety of possible crops. The wind erosion intensified. The accompanying continuous tree felling intensifies the negative effects of climate change. All of this worsens already very difficult economic situation. Usually young people seeing no chance of improving their standards of living, decide to leave their homeland and go into the unknown.

Such experiences are known in the history of Italy in the early twentieth century. Great owners of latifundia expanded their properties on plains, thereby forcing small farmers to deforestation and withdrawing to mountain slopes, which were prepared for cultivation and animal husbandry. They did not have to wait long for further changes. Few periods of greater rainfall were enough. Slopes deprived of plant cover slid down in the form of mud avalanches or underwent erosion quickly becoming a stony and impoverished wasteland. Cut down forests and degraded soils could not have provided preserving them. There remained only emigration to cities or abroad.

Likewise, today's inhabitants of the mountainous areas of Albania, who apart from difficult socio-economic conditions experience a variety of other effects due to their geographical location. Living in the medium and higher altitudes means that they live in relative isolation due to limited connectivity options and they use public infrastructure and social welfare to a small extent. This serious situation is intensified due to progressive deforestation and environmental degradation in general. For rural residents the only way out seems to be emigration, which paradoxically becomes the largest economic resource of the country. The departure from the village (especially it concerns mountain villages) in search of a place to live, almost always ends on the outskirts of large cities. Such a residence is almost always illegal, it remains beyond the control of the services and the authorities. It also has its serious economic, social and ecologic consequences. Usually the first ones are emphasized as the most experienced and measurable. More rarely there are mentioned values and cultural heritage acquired from previous generations, especially in terms of tangible and intangible, landscape heritage, local traditions, crafts, music passed down from generation to generation. All of this, because of the increasing internal and external emigration, almost

certainly can completely disappear in short time. The subsequent result of depopulation and departure from rational economy of used areas is also disordered deforestation and reducing sensitivity to the state of environment. Lack of interest in the state of environment creates the risk of maintaining the natural and cultural biodiversity of the given region.

3. Raw materials – raw material conflicts and migrant crisis

In dynamically changing international policy natural raw materials play a key role. The best confirmation of it is the lack of stability in the post Cold War world. Conflicts conducted in different regions of the globe, almost everywhere or somewhere in the background, relate to the access and control of everything what today's man needs. It for sure raises a lot of internal and international concerns. Their victims, in the fear of their unexpected effects (or the need to find the solution of already existing problems) decide on an uncertain future as immigrants (Pronińska, 2005, s. 29–47).

Together with the development of civilization other raw material became appreciated. Without the access to resources there is no economic progress. Ambitious in their development societies are ready to use any means (including the military ones) only to ensure their own prosperity. Therefore, they can become the subjects/reason/purpose of the conflict or serve as a form of payment. Uneven distribution, deficiency and the fact of their gradual depletion, cause anxiety of societies, especially these highly developed and it leads to political tensions. This anxiety becomes even greater, because a significant part of these mostly wanted and necessary to develop modern technologies, is extracted in the poorest countries, the most economically and politically unstable regions of the world. Similarly as with transport routes to the countries dependent on import. Disputes and internal tensions, especially in a situation of politically unsure and unclear legal status, especially the ownership of some deposits areas, contribute to conflicts and anxieties and each of them causes larger or smaller waves of people looking for peaceful lives. For this reason,, both the lack of economically important raw materials, and their excessive wealth, which generates additional divisions and conflicts, for many people is the reason of making such important decisions. Conflicts about taking over and keeping the control over diamond mining in Angola, Sierra Leone, Congo, Liberia or Guinea, were internal though, but the effects of incoming refugees also concerned neighbouring countries.

In many cases the exploitation of mineral deposits leads to the complete devastation of the natural environment. Sources of water, arable land and fisheries are destroyed. It sometimes happen, that the degradation of nature, which is the basis of local communities' existence, becomes a cause of conflicts between government forces and indigenous inhabitants of the disputed territories. It happens for instance in Borneo or Papua, which are examples of the open opposition of the natives against the decision to issue a licence for tropical deforestation and exploitation of mineral deposits. It results in massive displacements, destroying lands used for agriculture and water systems.

4. Water – sources of conflicts and migration

To sustain existence, a man does not need anything more than water. It was the reason for numerous wars in past and it seems that in the future the situation might be analogous. Water, in contrast to mineral and energy resources, as something irreplaceable, is an object of strategic importance. Maybe in the future this function will be enlarged.

Due to climate change, reduced rainfall and shrinking mountain glaciers, many rivers drain less water than in the past. This decrease reaches up to 30%. Simultaneously, the demand for this necessary component of life is bigger. Moreover, it is precious object for home use, the raw material for industrial production, irreplaceable element in the production of energy, mostly in the agri-food sector. Therefore, also in this respect, the future does not look promising and the demand for water grows like never before.

The increasing world population means escalation of the demand for drinking water. Furthermore, it is a significant increase in demand for water in developing industry and agriculture, which try to ensure a sufficient amount of food. However, the amount drinking water is not growing – just the opposite. Drinkable springs diminish and these which are used are still insufficient or polluted. Therefore, their deficiency is just like in the case of mineral and energy resources – the reason for tensions and conflicts. It is easy to notice in the redion powered by the waters of Tigris and Euphrates, where the production of food in Syria, Iraq and partly in Turkey would be very difficult or even impossible. Unsettled relations between these countries concern, among others, the access and using the resources of these rivers. The situation is similar, for several decades, also in the Middle East, where the object of constant concerns is the Jordan River, which provides water to

Israel, the Palestinian National Authority and Syria. In terms of the number of human beings and the consequences of their existence, the object of water of the greatest importance is probably the river Nile. It flows through ten countries, nine of which belong to the poorest countries in Africa. Nile determines the development of economy and agriculture in Burundi, the Democratic Republic of Congo, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, Uganda and of course Egypt.

5. Migration and migrants (non-political)

A man always undertook journeys in order to find better and more comfortable living conditions. The reasons of it were often environmental factors. However, nowadays climate change occurs extremely quickly. With the unusual speed, they cause property damages and are harmful for human health and lives. We can assume, that to some extent people contribute to this situation.

The so-called climate refugees are the people forced to change their place of residence, which are the destitute in the place of their current residence, mainly due to the extraordinary changes in the environment caused by climate change. These phenomena include: drought, desertification, deforestation, erosion, soil depletion, exhaustion of resources and natural disasters, for example cyclones and floods. It is expected, that these phenomena will have an increasingly negative impact on society. There will be also increase of people forced to abandon their homes and to search for the new ones.

Therefore, who are climate refugees and when can we talk about them? It is difficult to determine clear reasons. Above all, it is hard to separate environmental factors from all others. There is no certainty whether these are their own decisions or affected by some other reasons, i.e. political. There are usually indicated economic factors (labour, crop, earnings, level of social benefits, prices), political factors (discrimination, persecution, internal conflicts, restriction of freedom), social factors (education, family), demographic factors (population density, social structure, diseases). Such conceptualization shows predominance of economic reasons in most cases, even if the climate conditions shape effectiveness and prices of agricultural products, food, and secondarily also the state of the living environment, economic indicators in industry, politics, etc. Moreover, the important factors are also personal and territorial characteristics – it concerns mainly individual motivation, social and economic capital.

A first, people usually tend to move within their own country, they leave villages and areas, which cannot be used for agriculture and they move to cities, which seem to be less dependent on the weather. It causes quick, uncontrolled and dangerous urban population increase, for which usually there is not enough employment. There is usually reported a rapid increase in the number of acts of violence, conflicts, growing crime. Next, the needies who were not able to find livelihood, try to find the way to cross the borders of neighbouring countries, where usually water, food and most of all, employment opportunities are not sufficient. No wonder that the rich Western countries face the problem of influx. These people need everything and usually are not educated and the previous conditions in which they lived so far made them helpless.

Anyway, the effects of the changes probably will concern most of us. Mass migration surely will affect a significant displacement of people of different cultures and beliefs, and the intensity and size of this displacement may bring unprecedented and impossible to predict consequences of economic, political, social and cultural nature.

According to international law, climate immigrants as institution has been not nominated yet. However, they exist. What is more, there are a lot of them and the number is still growing. Families and entire local communities leave their homes, mainly due to the extreme weather anomalies, unusually torrential storms and floods. Every year their number is estimated in tens of millions and in 2015 it is supposed to be about 250 millions. Nevertheless, international law still has not provided any definition for people who are forced to change their lives due to climatic and environmental conditions. Moreover, there are no prepared appropriate mechanisms to protect and help such migrants. Even determining the concrete reasons becomes a problem. In case of hurricanes or floods it is rather simple. It is easy to point out a direct factor in nature, which forced to make such decision, even though it is not so obvious. The situation is much more difficult in case of complex and long-term processes, such as drought or desertification, which affect large areas of Africa, mainly but not only – Sub-Saharan Africa. In such cases, it is not simple to indicate motives, which forced to leave the previous places of living and working. In urgent cases, the relation between the effect and the cause is quite easy to identify. Identifying and linking the causative factors is usually much more difficult when we are talking about long-term phenomena,

because they occur simultaneously and/or overlap. For instance, recurring droughts cause decrease in productivity of soil. The lack of crop forces to look for more favourable places to live. However, connecting exhaustion of fields with long-term climate change is not always correct. Therefore, calling such people as economic migrants is not quite right simplification.

Nevertheless, is there any real need for legal definition of climate migrant, since regardless of the reasons forcing them to find help, the most serious consequences are beared by immigrants themselves? Sometimes, plans to help migrants and support the receiving ones is more important than reasons of such phenomenon. From the ethic point of view, it is better just to call them "fugitives", whom de facto they are. They are people running from some danger. Quite incompetent looking for some proper legal qualification became a kind of alibi. It is convenient, while leading some policy, take ones (due to commitments) and send back others as less endangered ones, but always equally inconvenient. Law in these cases is a very clever instrument. For sure, such an approach in international politics may be useful, but it cannot stop the decisions of those whose economic and living conditions become really dramatic. Migrations always took place and these caused by non-political and non- economic factors (which always remain in interaction with each other) certainly will be intensified. The right to change the place of residence, therefore should not denied, since causes are becoming more difficult to define, so it is hard to make some legal classification. They are always multi-ply. It correctly determines the reality: the devastated areas, those regularly affected by droughts and crop failure, almost simultaneously or shortly thereafter have armed conflicts in order to take control over the water sources and exploitation of natural resources.

Taking it all into consideration, the subject of migration should be an opportunity to reprimand societies and sensitize in the sphere of environment protection and the concrete effects of climate change striking people. But are we able to do it? Do we have enough time, taking into account that the changes take place before our eyes and our mentality does not change?[1]

Summary

Climate change, amongst others through generating economic disproportions, contribute to social misunderstandings and in some cases are directly the causes of open social conflicts, which can easily turn into revolts and wars.

When the man – owing to circumstances beyond his control – is running out of water, food and basic livelihood, it is hard to rely on rational thinking and proper judgement of reality. Survival is the only thing that matters. Weather anomalies, droughts and floods damaging crops or natural disasters, force people to abandon their own properties and to go into unknown, where only few people can find better conditions of life. There appears frustration, disappointment and despair, drastic worsening of life conditions may lead to criminogenic behaviours. Growing antagonisms become an impulse for political pressure and starting legal procedures and afterwards a number of initiatives limiting worrying influx of people, which the modern world is experiencing with varying intensity.

Science can come with help to a certain extent. Drawing up appropriate reports concerning specific threats for the most vulnerable regions would help in taking concrete political and material actions. The scale of current and future changes in environment requires the involvement of chief state authorities in order to maximize the benefits and minimize risks for the people who experience adversities. It will help in developing and implementing local strategies of saving what is still possible to save. Emigration and counting on help from the stronger and richer ones is not always successful. It is not always and not necessarily the only and the best option.

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Endnote

[1] Cfr. http://www.difesapopolo.it/Immigrazione/Sono-gia-milioni-nel-mondo-i-migranti-ambientali, (2.07.2016).

Migrants' right to religious freedom as a reason for cultural changes in European host countries

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Abstract

Subject of research: Migrants (refugees) enjoy extensive religious freedom under international documents. However, one of the problems raised as part of the migration (refugee) issue is the claim that they form some kind of danger to the religion of the host society. An influx of Islamic people into a Christian society is construed as a major threat to the religious integrity of that society.

Aim of research: This paper investigates the hypothesis that massive migration combined with religious freedom lead to cultural changes in host European countries. The issue also concerns national security and public policy, which are threatened by terrorist activities motivated by religion. Nevertheless, this issue evolved from a legal problem to a political and cultural one.

Methodology: The main method used in the paper is formal-dogmatic. The paper focuses on analyses of the provisions of international human rights as well as case law of the European Court of Human Rights and the Court of Justice of the European Union. The historical method used for the analyses of case law allowed for theoretical considerations of the impact of migration on the cultural behavior of societies in host countries.

Keywords: religion, cultural changes, security.

1. Preliminary remarks

The nature of the policy is to protect human life and preventing from all dangers. Security is one of the most important values, which have impact on people's needs and interests. It is the basic need which motivate the activity of individuals and social groups (*Bieleń, 2010, pp. 65, 67*). National security is usually defined as the nation's ability to defend its internal values against external threats (*Kuźmiak, 2013, p. 30*). If security is understood as protection against armed attack, but more often as the absence of threat to major societal values, then security has different meanings among different

societies (*M. Weiner, Security, Stability, and International Migration, Center for International Studies 1990, http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=19789 [4 April 2016]*). This values should be include among others: the sovereignty and independence of the state, social and economic system, "national lifestyle" and the cultural system (*J. Kukułka, Bezpieczeństwo a współpraca europejska: współzależności i sprzeczności interesów, "Sprawy Międzynarodowe" 1982, nr 7, p. 30*), the ideological and cultural-civilizational values (*A. D. Rotfeld, Europejski system bezpieczeństwa in statu nascendi, Warszawa 1989 r., p. 18*) including religion values. Dealing with cultural and religious transformations, it is taken for granted that religion is part of the culture, even though it is not the same thing (*da Silva Moreira, 2014, p. 381*).

Religious imperative has become the main characteristic of the current terrorist activity (*Hoffman, 2001, p. 83*). Nowadays, the biggest threat for the security of the European countries are terrorism and organized crime, which is strongly linked with the phenomenon of migration. The state security and the security of the international system as a whole depends on: international cooperation, collective solutions to common problems and the building of public confidence (*Bieleń, p. 67*). The migration problem is treated not only as a danger to human security but also as danger to the security of state and international security (*Potyrała, 2015, p. 36*).

Nowadays we are witnessing intense new worldwide migration and refugee flows. There are now millions transnational immigrants and millions refugees displaced from their homelands (*Suarez-Orozco, 2001, p. 179*). Currently our generation is facing with one of the greatest historical challenges of human migration from Islamic countries such as: Syria, Eritrea, Somalia, Libya, Afghanistan.

This paper investigates the hypothesis that massive migration is combined with religious freedom which lead to cultural changes in host European countries. What is more the issue concerns national security and public policy, which are threatened by terrorist activities motivated by religion. Nevertheless, this issue evolved from a legal problem to a political and cultural one. The main method used in the paper is a formal-dogmatic. This article is focused on analyses of legal acts in area of human rights regulations as well as case-law of European Court on Human Rights and the Court of Justice of the European Union.

2. International regulations

Guarantees of religious liberty are inevitably found in the constitutional orders of liberal democratic societies and in international and regional human rights instruments. To some extent, these reflect the concerns at the time with drafting these instruments.

In case of refugees rights and freedoms the document of crucial importance is the Convention relating to the Status of Refugees adopted on 28 July 1951 (*United Nations, Treaty Series , vol. 189, p. 137*), as supplemented by the New York Protocol of 31 January 1967 (*United Nations, Treaty Series, vol. 606, p. 267*). The Geneva Convention and the Protocol provide the cornerstone of the rights and obligations of refugees. Geneva Convention in article 4 obliged states to grant refugees the freedom to practice their religion and freedom as regards to religious education of their children. This is the only Article in the Convention where treatment at least as favorable as that accorded to nationals of the Contracting States is provided for.

Rules which concern refugees are complemented by measures stipulated in Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, which was replaced by Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (*OJ L 337, 20.12.2011, p. 9–26*). According to Article 20 directive regulations in area of rights and obligations shall be without prejudice to the rights laid down in the Geneva Convention. The rights of refugees, in area of administrative and judicial proceeding, are determine by in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (*OJ L 180, 29.6.2013, p. 60–95*) and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (*OJ L 180, 29.6.2013, p. 96–116*). Commonly reception standards are an element of European policy (*Gilbert, 2004, p. 974*), the Polish law also reflects all international regulations, especially in Act of

13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (*Journal of Laws of 2005, No 90, item 757, No 94, item 788, as amended*), and in Act on Foreigners of 13 December 2013 (*Journal of Laws of 2013, No 1650, as amended*), and more other acts.

Besides documents protecting refugees rights and freedoms there are many international documents protecting human rights and freedoms in general. The Universal Declaration of Human Rights of 10 December 1948 in article 18 states the freedom of thought, conscience and religion, according to which 'everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, (…) to manifest his religion or belief in teaching, practice, worship and observance'. A fuller formulation (which includes a reference to education, but excludes explicit recognition of the right to change religious belief) is found in Article 18 of the International Covenant on Civil and Political Rights of 1966. This regulation at the same time presents the basic conditions of limitation of those freedom. According to this principles 'everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions'.

Such guarantees are found in other instruments at the regional level. For example, Article 12 of the American Convention on Human Rights of 22 November 1969 provides that freedom of conscience and religion includes the freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. Article 8 of the African Charter on Human and Peoples' Rights of 26 June 1981 specifies that freedom of conscience, the profession and free practice of religion shall be guaranteed; no one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

The most relevant is Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 guarantees those freedoms. The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights in Article 9 'Freedom of thought, conscience and religion', says 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance'. This freedom includes also 'freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'. Article 2 of Protocol No. 1 to the European Convention on Human Rights in the context of the right to education also provides that: 'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'.

In the end, there is no difference if the foreigner is a refugee or migrant they are seen as religious threat to the hosted society which cause conflict in general. Thus an influx of Islamic people into a Christian society would be construed as a major threat to the religious integrity of that society (*Frost, 2003, p. 111*).

3. Scope of the right to religious freedom

The right to religion freedom grant refugees and migrants the opportunity to practice and manifest their religion. In addition they have freedom to choose which religion they will raise they children in as well as freedom to change one's belief. In fact refugees have the same rights as the nationals of all creeds in the state (*P. Weis, Commentary to The Refugee Convention, 1951, The Travaux Preparatoires Analysed, http://www.refworld.org/docid/53e1dd114.html, [4 April 2016], p. 37*). However the followers of a minority religion have to accept restrictions with their religious activities in regard to public concern or even riots (*Commentary on the refugee Convention 1951, Articles 2–11, 13–37, Division of International Protection of the United Nations High*

Commissioner for Refugees 1997, http://www.unhcr.org/3d4ab5fb9.pdf [3 April 2016]). What is more state cannot prohibit to practice religion in private (*Commentary on the refugee Convention 1951*). Considering this regulations it should be remembered that when offenders treat violence as Godly duty or sacramental act, applying a different method of justification of those acts than "ordinary" terrorism, and it leads to a much greater bloodshed and destruction (*Hoffman, 2001, p. 84*).

In Western Europe religion is generally viewed as the problem not the solution for immigrant minorities. In European society Muslim is analyzed as a challenge or even as a barrier to integration and a source of conflict with mainstream institutions and practices (*Foner, Alba, 2008, p. 368*). Religions offer fellowship, provide various forms of entertainment, enforce appropriate social behavior, predict or influence the future, and provide information about the afterlife. On the other hand religion is enormously complicated human activity (H*ull, Bold, 1994, p. 447, 448*).

Common complaint about immigrants is that they 'harm' our culture. Many of them fail to learn languages, and cling to the backward ways of their homelands (*Caplan, 2012, p. 11*). The new immigration include large numbers of poorly educated, semi-skilled or unskilled migrants and many of them are without proper documentation so they are illegal aliens.

Immigrants today are a heterogeneous population and they are stereotyped (*Suarez-Orozco, 2001, p.180*). Immigration generates changes. Immigration has brought a new religious diversity to the EU. The immigrants themselves undergo a variety of transformations. In case of migration which are not massive immigrants families directly feel the impact when moving from home to a stranger culture that essentially celebrates another religion (*Morgan, 2014, p. 2*). When migration is massive, which we are witnessing at the moment, have the same impact hoverer to the hosts feeling.

First aft all, the case of Colonia in Germany, where about 80 women reported sexual assaults and muggings by men on New Year's Eve. About 1,000 drunk and aggressive young immigrant men were involved. The men have got the appearance of Arab or North African. The disturbance is that the attacks seems to be organised. A young men arrived in large groups with the specific intention of carrying out attacks on women. Some similar attacks were reported in Stuttgart, Hamburg and Sweden. After this Cologne Mayor Henriette Reker suggested a 'code of conduct', for women, to prevent

sexual assaults. They were advised to stay with trusted group of friends but also 'keeping an arm's length' from men they do not know. German society criticized this suggestions, which shows our vulnerability to change our way of behaviour. At the same time this situations reveals the influence of religion and culture that determined how women are treated by Muslims. The immigration process inevitably changes the members of the dominant culture (*Suarez-Orozco, 2001, p. 186*). People learn how to shift from one symbolic system to another according to their needs, while simultaneously being forced to interpret multiple tasks such as choosing, evaluating and setting priorities (*da Silva Moreira, 2014, pp. 382, 383*). It cannot be excluded that part of European men will follow this behaviour, and they change the social attitudes towards women.

All countries must face multicultural and multi-ethnical reality. Multicultural society might lead to conflicts, in addition different religion start to compete with each other. Thus, as a consequence of immigration and ethnocultural revival state religions often lose their hegemonic position as other religious competitors.

Over the last few decades Muslim mosques have appeared in most major cities and in quite a few smaller cities and towns in Europe. In Swiss case, where in 2009 referendum constitutional amendment banning the construction of new minarets was approved by majority of voters. But as of the date of the 2009 vote, there were four minarets in Switzerland, attached to mosques in Zürich, Geneva, Winterthur and Wangen bei Olten. These existing minarets are not affected by the ban. New places of worship have been constructed, and at the same time churches was closed. And this is the most visible manifestation of the impact of new immigrants (*Hirschman, 2004, p. 1226*). This issue is related with case *Karaahmed v. Bulgaria* (*Judgment 24.2.2015 of European Court on Human Rights, application no. 30587/13*) which around 150 leaders and supporters of a right-wing political party came to protest against the noise emanating from loudspeakers at the mosque during the calls to prayer. In those cases the Court found failure to take adequate steps to prevent or investigate disruption of Muslim prayers by offensive and violent demonstrators. Every religion or culture itself, is structured on a dynamic fundaments which involves memory and conservation, novelty and recreation. The transformation processes of culture and religion are complex and multifaceted. The forms of this interaction can assume range

from extreme acceptance and merging, to fundamentalist armed resistance (*da Silva Moreira, 2014, p. 385*).

Another visible change in our culture is wearing religious symbols or clothing in public domain, like headscarf. In European Court on Human Rights there are many cases in which Muslims followers would express their creeds: in consulate proceedings during visa application (*see* J*udgment 4.03.2008 of the European Court of Human Rights, case El Morsli v. France, application no. 15585/06*), at school, at university (*see Judgment 15.02.2001 of the European Court of Human Rights, case Dahlab v. Switzerland, application no. 42393/98, Judgment 24.01.2006 of the European Court of Human Rights, case Kurtulmuş v. Turkey, application no. 65500/01, Judgment 10.11.2005 of the European Court of Human Rights, case Leyla Şahin v. Turkey, application no. 44774/98*) or in Judgment 26.11.2015 of the European Court of Human Rights (*Ebrahimian v. France, application no. 64846/11*) where a hospital social worker refused to stop wearing the Muslim veil. The Court noted that the banning was necessary to protect the hospital patients from any risk of influence in the name of their right to their own freedom of conscience.

The significant pending application in case of *Pekünlü v. Turkey* (*2015, application no. 25832/14*) concerns the criminal conviction of the applicant, a university lecturer, was seeking to prevent a student from wearing an Islamic headscarf from entering a higher education institution.

In all of those cases Court generally declared that the restriction based on clear principles and adequate to the aims of preventing disorder and protecting the rights and freedoms of others could be justified.

New immigrants are expecting to have their religion and culture respected however at the same time there is a problem with respect granted for European tradition and culture. For example in Swiss schools there is tradition to shake the teacher's hand at the beginning and at the end of lessons. This sign of respect is a longstanding tradition in Switzerland. It is part of Swiss culture. Two Muslim teenagers brothers whose interpretation of the Koran forbid them from touching any member of the opposite sex, deny to do it. The boys, whose father is an imam, said their faith does not allow them to shake hands with any women who were not related to them. At the beginning, school had allowed two Syrian brothers to avoid the tradition due to their religious beliefs. Some Swiss Muslim groups said there was no religious justification for refusing to shake a female teacher's hand and urged the Swiss not to give

in to extremist demands. However another Islamic organization claim that handshake between men and women are strictly prohibited. The school had tried to find a solution by deciding whether the boys should not shake hands with male or female teachers. The authorities decided that the public interest concerning gender equality as well as integration is more important than the freedom of students belief.

Danish case shows the new minorities has 'lack of tolerance and inclusiveness'. In one of the cities in the housing area in Kokkedal will not to have a Christmas tree with lights due to a Muslim majority in the Board which has refused to spend money on the Christmas tree. For decades it has been a tradition to have a Christmas tree with lights in the area between the buildings in December. In present a majority in the Chamber Board refused to spend the money on Christmas tree with lights. The decision has attracted so much attention since it was made three days after a big Islamic Eid party in the town, which also required spending a lot of many. It is a sign of a lack of tolerance and inclusiveness from 'the new majority' and their influence on public expenses.

Another significant case was in Britain. A taxi driver has three English flags displaying the St George's Crosses stuck on the doors and boot of her vehicle. But after one complaint from a competitive cab company (Paki Muslim?), she was accused of breaching 'equality' laws. Authorities of the Town (Davon) admitted the stickers would be offensive to foreigners.

Similar case was in Italy. In Italian school in Rozzano near Milan a headmaster of the school banned Christmas concerts and carols in his school in the name of multiculturalism. In his school the number of pupils was non-Christian faiths, primarily Muslim. Because Muslim children didn't sing and even was taken out from the stage by their parents it was enough to bun the custom.

To sum up, all examples shows that in resent years Muslims culture and religion has got a strong impact on culture and religion on European civilization.

4. Limitation the right to religious freedom

In case of *Metropolitan Church of Bessarabia and Others v. Moldova* (*Judgment 13.12.2001 of the European Court of Human Rights application no. 45701/99*) the Court on Human Rights noticed that in a democratic society which several religions or branches of the same religion coexist within, may

be necessary to implement restrictions in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected enough.

Firstly, the state is under a negative obligation to refrain from interfering with the protected rights. The overarching obligation is to secure rights however not to limit requirements that states refrain from interfering with protected rights. Secondly, it can also place the state under an obligation to take further steps. A positive obligation is to ensure that religious communities may exercise the freedom to worship or otherwise 'manifest' their faiths through teaching. It will always be necessary to examine the facts of each case with particular care (*Murdoch, 2012, p. 33*).

It is obvious that freedom to manifest thoughts, conscience or beliefs must be restrain on behalf of public safety, public order, health and morals, or for the rights and freedoms of others (*see case Metropolitan Church of Bessarabia and others v. Moldova*). In results the freedom of religion is not absolute. A state may interfere with a 'manifestation' of religion in certain circumstances. The interference must have a legitimate aim, must be 'prescribed by law', must be 'necessary in a democratic society'. Additionally, it must correspond with pressing social need and adequate to the legitimate aim pursued, and be justified by relevant and sufficient reasons. However the problem may occur. But important is that this regulations must have a basis in domestic law and be both adequately accessible and foreseeable, and further contain sufficient protection against arbitrary application of the law. The stronger the 'pressing social need' is, the less difficult it will be to justified the interference. National security should be considered as principle such as public safety which appears to be a compelling social need (*Murdoch, pp. 37,39,41*).

In the Koran and Muslim tradition, they are obliged to take up any efforts in the name of spreading and strengthening of their beliefs, which may required a violent or non-violent form, e.g. through armed struggle, the conversion of the infidels, peaceful promotion of Islam, and internal struggles followers (jihad). There is no doubts that the authorities must respond appropriately to protect citizens from religiously-motivated attacks, such as proselytism. The right to religion freedom encompasses the 'teaching' as a recognized form of 'manifestation' of belief. The right to try to persuade others of the validity of one's beliefs is also implicitly supported by the reference in the text to the right 'to change [one's] religion or belief'. The right to proselytize by attempting to persuade others to convert to

another's religion is thus clearly encompassed within the scope of the right to religion freedom. But this right is not absolute, and may be limited where it can be shown that this is based upon considerations of public order or the protection of vulnerable individuals against undue exploitation. The jurisprudence distinguishes between 'proper' and 'improper' proselytism (*J. Murdoch, pp. 47*). According to this point of view, a distinction had to be drawn between 'ordinary muslim believer' and 'improper proselytism' which involved undue influence or even using force. It may entail the use of brainwashing, violence or even terrorist acts. It is not compatible with respect for the freedom of thought, conscience and religion of others. Under judgments 25.05.1993 (*Kokkinakis v. Greece, application no. 14307/88*) and 24.02.1998 (*Larissis and others v. Greece, application no. 23372/94, 26377/94 and 26378/94*) the European Court of Human Rights say that states may take steps to prohibit the right of individuals to try to persuade others of the validity of their beliefs, even though this right is often categorized by adherents as an essential sacred duty. The cases also clearly indicate that any interference with the right to proselytize must be shown to have been necessary in the particular circumstances (*Murdoch, pp. 49*).

All in all special attention should be considerably on refugee situation. Every refugees as well as migrants besides their rights, are obliged to the host country where it is required in particular acting in accordance with the applicable law, regulations and measures taken for the maintenance of public order. In area of public orders obligations refugees should act with respect to all countries regulations but in particular they should beware of breaking the law which could constitute a series crime leading to dangerous situations for the community of that country. Under judgment of 24 June 2015, the Court of Justice of the European Union (*H. T. v. Land Baden-Württemberg, C-373/13, http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-373/13 [5 May 2016]*), if the refugees break the law, especially by a threatening 'national security' or 'public order' refoulement is possible as well as revoke, end or refuse to renew a residence permit. In judgment of 23 November 2010 the Court of Justice of the European Union (*Land Baden-Württemberg v. Panagiotis Tsakouridis, C-145/09, http://curia.europa.eu/juris/liste.jsf?language=pl&num=C-145/09 [5 May 2016])* explain that the concept of public security covers both internal and external security of the country. And that public security may be affected by a threat to the functioning of the

institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests. The court has also held that 'imperative grounds of public security' presupposes not only the existence of a threat to public security, but also that such a threat is of a particularly high degree of seriousness, as it is reflected by the use of the words 'imperative reasons'. In the judgment of 4 October 2012 the Court of Justice of the European Union (*Hristo Byankov v. Glaven sekretar na Ministerstvo na vatreshnite raboti, C-249/11, http://curia.europa.eu/juris/liste.jsf?language=en&num=C-249/11 [5 May 2016]*) explains that perturbation of the social order may involves any infringement of the law. In the same judgement Court said that concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In their judgments the Court has already declared that terrorists activities could be recognized as 'serious grounds of public policy or public security'. But even in those situations there is not possible to act automatically and the court or competent authorities must verify, on a case by case basis, whether the specific acts of the refugee can endanger national security or public order or even where those conditions are satisfied, *refoulement* of the refugee is only one option at the discretion of the host country, which can choose less rigorous options.

5. Final comments

Properly balanced policy based upon the needs of refugees and migrants is more difficult to formulate, implement, and legally and politically more difficult to adapt. So far no policy can deal with the vast numbers of people who want to leave their country for another one where opportunities are greater (*Weiner, 1990*). The fate of Muslim in Europe, and its shape depends to a large extent, from the direction which Europe will aim in cultural and social terms. Whether will go in the direction of wider rights for minorities, the absolute tolerance and undisputed freedoms, or will go towards reducing certain rights, freedoms and to uphold old values, ideas and foundations in Europe. The Islamisation of Europe is an inevitable and it should not be assumed easily that the mysterious Muslim culture would be in any way diminished by western adjustments (*Morgan, 2014, p. 6*).

Europe should rethink whether democracy should not tolerate Muslims' lack of acceptance of the separation of church and state or their denial of the right to criticize religion, including Muslim. Whether we accept any practices involved the subordination of women that are associated with Muslim immigrants, 'honor killings' carried out by brothers against women (who have besmirched the family's honor) or 'forced marriages' (*Foner, Alba, 2008, p. 369*). It is likely that the increasing cultural presence of the Muslim minorities helps Europeans to rediscover and revitalize the religious roots and symbols of their cultural identities (*Kilp, 2011, p. 218*).

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Political and moral contemporary migration based on the example of persecution of women (gender as a condition for obtaining refugee status)

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"*Wrong or onerous laws, high taxes, unattractive climate, inappropriate social background, or even enforcement (slave trade and transport), it all created and still creates migration flows, but none of these flows can be equal to the one formatting from the desire present with all people to improving standards of living (...)".*
E.G. Ravenstein, *The Laws of Migration*,
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Abstract

Subject of research: Among refugees all over the world who seek asylum in foreign countries women and girls constitute almost a half. This statistical data is based on the United Nations High Commissioner for Refugees. The reasons why women more often than ever wish to obtain refugee status are very varied, ranging from social, political, religious or moral persecutions to human trafficking or transplant aims. These are not, however, the reasons that may be categorized as a cumulative catalogue. Unfortunately, the development of the contemporary world implies more and more reasons as well as new forms of violating women's rights, who are forced to leave their countries of origin.

Purpose of research: On the basis of these crucial problems, the following article has been devoted to this problem. Its main is to characterize what the UNHCR process of creating standard for implementing gender presumption to refugee procedures looked like. Even though over 65 years have passed since the adoption of the Convention on the Status of Refugees of 1951, one should still conduct theoretical practices and practical actions that shall sanction persecution of women, in this case providing the international protection, i.e. granting refugee status.

Methods: In the following dissertation the methods of analyzing legal acts and documents, mainly international ones, have been used. Aditionally, the study included the positions of legal doctrine as well as statistical data.

Keywords: refugees, persecution, gender.

Introduction

As Cwerner points out: "Time and migrations have become fundamental issues on the contemporary debates on modernity, globalisation, and mobility (...)" [Cwerner, 2001, 7]. For the first time since World War II, Europe is experiencing a massive movement of refugees and migrants, women, girls, men and boys of all ages, fleeing armed conflicts, mass killings, persecution and pervasive sexual and gender – based violence [United Nations Refugee Agency, United Nations Population Fund and Women's Refugee Commission, 2016, 3]. Among all the challenges of XXI century, migration seems to be a particularly important phenomena. Certainly, it is not a new phenomena for the European countries. What gives its special character is its ongoing intensity and yet unknown impact on politics and socio-economic situation of particular European countries. The article presents a very small fraction of the problem of contemporary migration connected with granting refugee status to migrants, but to women only as an effect of their persecution in the countries from which they live. Considerations in actual fact relate primarily to the recognition of gender as a condition, because of which there are specific forms of persecution, appropriate or typical in most cases only for women, and justifying granting refugee status on the basis of the Geneva Convention relating to the Status of Refugees of 1951 (Hereinafter: the Geneva Convention or the Convention of 1951). [OJ 1991 No. 119, item. 516].

In the following dissertation the methods of analyzing legal acts and documents, mainly international ones, have been used. In addition, the study included the positions of legal doctrine and statistical data. The article draws attention to the fact that the subject concerning refugees in legal literature has been present for a long time and has been a major concern to both the representatives of science and practitioners. However, the gender aspect as a condition in which people – especially women – can base proposals for gaining refugee status does not constitute a broad legal analysis, especially in Polish literature.

1. The definition of migration and its reasons

Migration is characterized as a movement of people among different population centers, e.g. among countries or cities, among various geographical or state areas. Migration can be divided into forced one (i.e. a person due to certain circumstances is forced to flee from their countries of origin, e.g.

because of the military conflict) or voluntary one (i.e. people want but do not have to leave their countries of origin, e.g. departure for economic reasons). In addition, the division of migration can also be based on the criteria of legality, the so called legal migrations, when the movement of people between countries is based on legitimate, legally required documents and entry permissions (e.g. visas) and illegal migrations, when a person does not have the legally required travel documents. If the basis for the division will take the issue of coming back to the country of origin of a migrant, migration is divided into permanent (i.e. irreversible) and temporary (i.e. return).

Owing to the fact that migration is a complex and multidimensional issue as well as the object of interest of various studies, one would not expect a detailed and satisfactory theory, or a theoretical concept explaining the reasons for modern migration [Górny, Kaczmarczyk, 2003, 4]. The reasons for migration are varied and the most important ones are: economic reasons, where migration takes place to a country with better economic status; scientific reasons, arrivals to the country, where one can obtain education, e.g. foreign students; business reasons, arrivals to the country in which it is better to do business; the reasons that ensure security, when, for example in the country of origin of a migrant there is a conflict or persecution to population and at the same time human rights are violated; environmental reasons, when leaving the country of origin of a migrant occurs as a result of natural dangers, e.g. natural disasters, the absence or deficiency of drinking water.

Contemporary world and all the changes in it have caused the necessity to modify a lot of notions and phenomena and their analyses in the face of contemporary international events, social as well as political conditions. One problem is migration of people to Europe, mainly from Africa. Today migration is a phenomenon characterized by ongoing growth and the problem of migration and its determinants and effects has long been the subject of research and analysis of both a legal doctrine as well as other science [Degani, 2007, 23]. It is also in the interest of practitioners, government bodies and international organizations both governmental and non-governmental ones. Today, however, as everyone points out, both representatives of the doctrine as well as others who deal with the migration issue – the situation in Europe is unique in comparison with previous experiences. The events of the first and the second decade of the XXI century involving the influx of hundreds of thousands of people to Europe highlight a pivotal issue of persecution

in African countries, and the role of the international protection of the individual in the form of refugee status is being activated to a much greater extent than before. It is commonplace that Europe has for many centuries been and still is a place of the beginning and often the end of migration "wandering" for seekers of legal protection in the form of refugee status in other countries fleeing from persecution, which is a violation of basic human rights. Population migration to Europe in the last years of the XXI century arises curiosity, or even fascination; on the other hand, it arises worries and astonishment both for researchers and ordinary inhabitants who observe their society.

2. Definition of the term "refugee"

Grounded in Article 14 of the Universal Declaration of human rights 1948, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the centrepiece of international refugee protection today [Dz.U. 1991 nr 119 poz. 516]. The Convention entered into force on 22 April 1954, and it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention[1].

The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage. It has since been supplemented by refugee and subsidiary protection regimes in several regions[2] as well as via the progressive development of international human rights law.

The countries that have adopted Geneva Convention use the international law and grant refugee status on the basis of its definition:

> *„(…) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".*

As can be seen from the face of the text, the refugee definition applies to all persons without distinction as to sex, age, disability, sexual orientation, marital status, family status, race, religious belief, ethnic or national origins, political opinion, or any other status or characteristic. The only categories of persons who are not included in the definition are those described in the cessation provisions of Article 1C and the exclusion provisions of Articles 1D, 1E, and 1F. Even then, none of these provisions makes any distinction between individuals on the basis, for example, of their sex, age, disability, sexual orientation, marital or family status, race, political opinion, or religious or ethical belief. The intention to provide universal access to the refugee regime is expressly affirmed by the first and second recitals in the Preamble to the 1951 Convention:

> *Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General*
> *Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,*
> *Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms(...)*

Every person who tries to obtain refugee status should before government bodies of a particular country state his/her worries of persecution from the above mentioned reasons. Therefore, a refugee mustn't be a person leaving their country of origin due to all reasons, e.g. economic ones or due to natural disasters.

3. Gender vs. refugee status

Gender discrimination is the unequal form of treatment of women and men with their belonging to a particular sex, which is not determined by an objective condition. The reason for this type of discrimination lies in stereotypes connected to social roles for a particular sex in a particular culture [Niżyńska A., 2014]. Cultural archetypes of womanhood and manhood in most societies are explicitly outlined. It means that behaviour incompatible with expectations and predictions for a particular model norms may affect in negative consequences for a person breaking the norms

[Niżyńska A., 2014]. Gender-specific forms of persecution against women include, but are not limited to: marriage-related harm, violence within the family or community, domestic slavery, forced abortion, forced sterilisation, trafficking, female genital mutilation, sexual violence and abuse and rape. 'Gender-based violence' and 'violence against women' are terms that are often used interchangeably as most gender-based violence is inflicted by men on women and girls. However, it is important to retain the 'gender-based' aspect of the concept as this highlights the fact that violence against women is an expression of power inequalities between women and men. The terms are used interchangeably in doctrine but is usually understood that gender-based violence means violence against women. Gender-based violence is an umbrella term that can be defined as violence directed against a person because of that person's gender (including gender identity/expression) or as violence that affects persons of a particular gender disproportionately. Women and girls, of all ages and backgrounds, are most affected by gender-based violence. It can be physical, sexual, and/or psychological. As professor Heaven Crawley indicates, women are often refugees for such political or ethnic reasons as men, but the causes for which they seek for help are somewhat different:

- ⇨ women hide persecutors, forward messages, provide food, clothing and medical aid,
- ⇨ the authorities of many countries use family relationships to intensify the pain,
- ⇨ women who do not meet the moral or ethical standards of the community experience a cruel and inhuman treatment,
- ⇨ women are often targeted by the authorities because they are more prone to injury, especially if they are pregnant or are very young,
- ⇨ women may experience harassment on from their own family or community, not just the state authorities [Crawley, 2016].

More than a million refugees arrived in Europe in 2015, and despite misguided deterrence policies, the migration continues [Women at risk, 2016, 1]. Currently, 55 percent of those en route are women and children, many attempting to reunite with husbands and fathers who went ahead. The international legal protection of women who try to obtain refugee status is, therefore, a very important issue. However, among the conditions in granting refugee status, there is no clear *expressis verbis* persecution indicator based

on gender as a condition justifying the granting of refugee status to women. However, as 65-year practice of the Geneva Convention showed, persecution on basis of sex enters the scope of the possibility of obtaining refugee status was based on this criterion. The broad spectrum of standards of conduct for the recognition of sex, especially for women, as a condition justifying in certain circumstances refugee status has been developed in the Office of the High Commissioner Refugees (hereinafter: UNHCR). UNHCR's works on the standard inclusion of context – gender as a condition justifying the granting of refugee status under the Geneva Convention began back in the 80's. Since then, there have been a number of important documents relating to the issue of sex (mainly women) in refugee proceedings. In 1985, UNHCR's Executive Committee adopted Recommendation No. 39 of 1985. "Refugee Women and International Protection of Refugee Women and International Protection" [Refugee Women and International Protection, 1985]. The document was one of the first official UNHCR positions where Executive Committee stressed out that women and girls refugees represent statistically the majority of the world's refugee population. Women face particular problems in the field of international protection because of the legal and social conditions in the countries of origin – they are often exposed to physical violence, sexual violence and other forms of discrimination that may justify obtaining refugee status. Moreover, Recommendation of 1985 stated that women wishing to obtain refugee status, and who are treated inhumanly or degradingly due to a violation of their moral standards in the society in which they live, can be considered a 'particular social group' within the Article 1 A (2) of the Convention on the status of refugees of 1951.

In the 90's of the XX century there were other important UNCHR recommendations: *Refugee Protection and Sexual Violence Refugee Protection and Sexual Violence (*No. 73, 1993) and *General Conclusions on International Protection General Conclusion on International Protection* (No. 77/1995, No. 79/1996, No. 81/1997, No. 87/1999). References to the gender condition, especially women on the basis of human trafficking are also found in *Guidelines on international protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked* of 7 April 2006 [Guidelines on international protection, 2006]. In the above mentioned documents UNCHR stressed the necessity to make practices by the State aimed at addressing the

gender perspective – in relation to women, in law and practice concerning national refugee procedure [Refugee Protection in 1993, General Conclusion 1995, 1996, 1997, 1999]. These documents also emphasize that the important issue is to develop and implement guidelines, codes of conduct and training programs related to the promotion of knowledge on refugee procedures taking into account the gender perspective – including women.

The above mentioned conclusions were adopted by the General Assembly and the Executive Committee of the UNHCR in San Remo, where on 6–8 September 2001 the so called Expert Round Table[3] took place organized by UNHCR and the International Institute of Humanitarian Law, where the problem of persecution on the basis of gender in the context of 1951 Convention was discussed [Global Consultations, 2001].

Very important are *Guidelines on international protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (hereinafter: Guidelines 2002) [Guidelines on international protection, 2002]. This document is a kind of summary of UNHCR's achievements in the creating of the standard perception of gender in refugee procedures. Guidelines of 2002 clearly indicate that gender may be an influencing or even decisive condition, because of the category of persecution, on granting refugee status to women. UNHCR underlines that "even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims. As such, there is no need to add an additional ground to the 1951 Convention definition (…). It is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status. This approach has been endorsed by the General Assembly, as well as the Executive Committee of UNHCR's Programme" [Guidelines on international protection, 2002, 2,3].

Guidelines of 2002 in the standards that take into account gender as a condition for granting refugee status distinguish "social gender" and "biological gender". The notion of "socio-cultural gender" refers to the relation between men and women on the basis of status, roles and responsibilities for either of gender that are defined and interpreted

socially and culturally. Socio-cultural gender does not have statistical or inborn character, but gains social and cultural meaning over time. According to Heaven Crawley and others: "The term 'gender' (...) refers to the social construction of power relations between women and men, and the implications of these relations for women's (and men's) identity, status, roles and responsibilities (in other words, the social organization of sexual difference). Gender is not static or innate but acquires socially and culturally constructed meaning because it is a primary way of signifying relations of power. Gender relations and gender differences are therefore historically, geographically and culturally specific, so that what it is to be a 'woman' or 'man' varies through space and over time. Any analysis of the way in which gender (as opposed to biological sex) shapes the experiences of asylum-seeking women must therefore contextualise those experiences" [Crawley, 2001; Anker, 1999, 252-266, 365–93; Goldberg, 2000, 309]. In the case of the so called "biological gender" differentiation between men and women is mainly based on the strictly biological criteria (natural from a medical point of view). Taking into account that the concept of socio-cultural gender entered the customs of social and legal culture of countries in the 50's of the XX century, it also appeared as a natural result of the development of civilization in the interpretation of 1951 Convention. The adoption of the socio-cultural gender does not mean, however, that refugee status is entitled automatically to all women [Bernier, 1997, 167–168]. An applicant for refugee status must meet conditions resulting from 1951 Convention. He/she should prove that has a 'well-founded' fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. The requirement that the refugee claimant hold a 'well-founded' fear of being persecuted if returned to the country of origin requires a forward-looking assessment of the prospective risk of harm [Kälin, 1992, 21]. That assessment must be made by the decision maker at the date of the decision on the refugee claim [Jackman, 1992, 37]. Persecution is most appropriately defined as the sustained or systemic failure of State protection in relation to one of the core entitlements recognized by the international community [Hathaway, 1991, 104–5, 112].

Secondly, it is obligatory to point out the link between the fear of persecution and one of the reasons of persecution. The practice in the

national refugee procedures is very varied. Some countries use less restricted procedures – it is enough to meet at least one of the reasons persecution as a contributor, and not even a decisive factor. In other countries, it is required that causality has been established unequivocally. It is often dependent on the category of persecution that affect women, for example when violation of women's rights relate to the so called women trafficking; it is enough to qualify women as a social group, which is formed based on gender. Both UNHCR guidelines of 2002 and the states in national procedures claim that women are an example of a social subclass of people defined by inborn and constant characteristics.

Another important issue is to demonstrate that gender-based discrimination is often enforced through law as well as through social practices [Crawley, 2001, 51]. A woman's claim to refugee status cannot be based solely on the fact that she is subject to a national policy or law to which she objects [Immigration and Refugee Board, 1996, 11]. The claimant will need to establish that: 1. the policy or law is inherently persecutory; or 2. the policy or law is used as a means of persecution for one of the Convention reasons; or 3. the policy or law, although having legitimate goals, is administered through persecutory means; or 4. the penalty for non-compliance with the policy or law is disproportionately severe [Crawley, 2001, 51]. UNHCR guidelines show in this aspect that still many countries have failed to establish or implement sufficient criminalising and preventing measures against persecution of women. If the State does not take the steps, which are necessary to prevent and combat persecution of women and does not provide protection to victims, therefore the fear of persecution in this situation is justified in the light of provisions of 1951 Geneva Convention. The existence of national law prohibiting persecution of women is not a sufficient condition to exclude persecution. If the law exists, but is not implemented in an effective manner, despite the existence of legal mechanisms to provide protection and assistance to victims for a person does not have access to such mechanisms, then the State may be unable to legally protect victims or potential victims, i.e. persecuted women. Therefore, the assessment of whether the national authorities of the country of origin of persecuted women are able to protect victims or potential victims shall depend on whether legal and administrative mechanisms established by the State for this purpose are properly carried out in practice.

Conclusion

Nowadays, Europe is experiencing a massive movement of displaced people fleeing armed conflicts, mass killings, persecution, and gender-based violence. For instance, in 2015 from January to November 950,469 have been the arrivals of displaced people and migrants in Europe through the Mediterranean routes, escaping from Syria (49%), Afghanistan (20%), Iraq (8%), Eritrea (4%), Nigeria (2%), Pakistan (2%), Somalia (2%), Sudan (1%), Gambia (1%), and Mali (1%). Approximately, 24% of the people who arrived in 2015 are children and 16% are women[4]. The international protection of persecuted women through accepting gender condition as a cause for granting refugee status is an important step in maximizing the standard of human rights. Presently, counteraction against persecution of women is placed top on UNCHR priorities. The UNHCR gender – relevant guidelines, including the UNHCR Gender Guidelines adopted in 2002, are key elements for the promotion of gender-sensitivity in refugee status determination systems [Cheikh Ali, Querton, Soulard, 2012, 31]. Their impact is, however, limited in practice due to their non-binding character. Although gender guidelines or instructions may significantly enhance gender awareness among national stakeholders, their implementation in practice is often lacking.

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Endnotes

[1] The Convention enabled States to make a declaration when becoming party, according to which the words "events occurring before 1 January 1951" are understood to mean "events occurring in Europe" prior to that date. This geographical limitation has been maintained by a very limited number of States, and with the adoption of the 1967 Protocol, has lost much of its significance. The Protocol of 1967 is attached to United Nations General Assembly resolution 2198 (XXI) of 16 December 1967, available at http://www.unhcr.org/refworld/docid/3b00f1cc50.html.

[2] See, for example, the Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, adopted in Addis Adaba, 10 September 1969; the European Union Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,

Official Journal L 304 , 30/09/2004 P. 0012 – 0023. The Cartagena Declaration on Refugees, adopted at a colloquium held at Cartagena, Colombia, 19-22 November 1984, while non-binding, also sets out regional standards for refugees in Central America, Mexico and Panama.

[3] Among all participants there were 33 experts from 23 countries representing governments, nongovernmental organizations, academic communities, the judiciary, and law professions. The meeting confirmed that 1951 Geneva Convention is based on a primary principle according to which people use primary laws and freedoms without being discriminated. Due to the fact that men, women and children may experience different persecutions adequate to their characteristics (sex or age), the Article 1a (2) must be interpreted by these different characteristics and individual circumstances that are a basis for gaining refugee status. The experts firmly stated that gender may be the particular circumstance. Summary Conclusions – Gender – Related Persecution of 2001 have been added to UNHCR guidelines of 2002.

[4] Data available at: UNHCR, 2016 and http://data.unhcr.org/mediterranean/regional.php. Visited on 2 February2016.

The Rights of Migrant Workers in The United Nations System

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Abstract:

The study presents the rights of migrant workers in the United Nations System. It is estimated that 150 million economically active people live outside their countries and this trend is only expected to grow. That is the reason why the world should pay attention to migrant workers and ensure their human rights.

The most important United Nations legal act which protect the widest range of migrant workers rights is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from 1990. The paper shows the status of ratification of the Convention, scope and the most important definitions. Article also describes provisions of the Convention refers to the specific situation of migrant workers and – what is more – refers only to documented workers. The paper also shows the human rights mechanisms, such as the Special Reporter on the Human Rights of Migrants and the Committee on Migrant Workers.

The main objective of the study was to show both weak (for example low number of ratifications of the Convention), as well as the strengths of the UN mechanisms for the protection of the rights of migrant workers.

Keywords: rights of migrant workers, United Nations human rights, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Introduction

The absolute number of people migrating has risen from 154 million in 1990 to 244 million in 2015. It has been estimated, that 3.3 percent of the world's population, lived outside their country of origin (source: United Nations Population Fund website, <http://www.unfpa.org/migration> [04.06.2016]). Nowadays – there are more international migrants in the world than at any other time in history. What is more, this trend is only

expected to grow. Many people cross borders in search of better economic and social opportunities. International Labour Organization estimates (*ILO Global Estimates on migrant workers. Results and methodology. Special focus on migrant domestic worker*, International Labour Office – Geneva, ILO 2015, p. 5) that in 2013 it was 150 million economically active people which where living outside their countries[1]. Migration today is a feature of international labour and skills mobility. Migration could be a positive and empowering experience, but, on the other hand, migrants are expose to human rights violations, discrimination, and exploitation, especially when they don't know national language of their destination and have no support in that country. Migrants are often to be found working in jobs that are dirty, dangerous and degrading. That is the reason why the world should pay attention to migrant workers and ensure their human rights.

There are three levels of human rights: international, regional and national. This article presents the international regulations of the rights of migrant workers in the United Nations system. The United Nations (called also UN) is an intergovernmental organization to promote international co-operation around the world. The organization was established on 24 October 1945 when the United Nations Charter had been ratified by a majority of signatories. At its founding, the United Nations had 51 member states, there are now 193 (*History of the United Nations*, [online], <http://www.un.org/en/aboutun/history/> [10.06.2016]). Versatility, or in other words, the universality of the UN refers to several aspects of this system: geographical, which indicates that the UN affects almost the whole world; objective because it takes into account all the basic categories of human rights; and subjective, which means that the system applies to all UN Member States (Jabłoński, Jarosz–Żukowska, 2004, p. 178).

1. The right to work – basic regulations

Basic legal acts adopted by United Nations bodies guarantee the right to work to everyone without any exception. The Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948 at Paris in article 23 states that everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. What is more – everyone who

works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Finally – everyone has the right to form and to join trade unions for the protection of his interests. The term "everyone" which is use in article 23 means that not only citizens have the right to work in good conditions, but every human being.

What is more article 5 of the International Convention on the Elimination of All Form of Racial Discrimination adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 states that States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee inter alia the right to work of everyone, without distinction as to race, colour, or national or ethnic origin. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and under-employment, UN Member States shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. Employment Policy Convention (1964, no. 122) adopted on 9 July 1964 by the General Conference of the International Labour Organisation at its forty-eighth session, states that this policy shall aim at ensuring that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin (art. 1). Employment Policy Convention has been ratified by 111 countries. We can say that it is a wide range of influence of this convention.

These regulations show that the United Nations does not differentiate the right to work, depending on the nationality of the employee. In particular, states should provide foreigners the same rights as citizens.

2. Legal framework of the United Nations concerning directly the rights of migrant workers

At first, International Labour Organization (specialized agency of the United Nations) adopted conventions and recommendations concerning directly migrant workers. International Labour Organization standards on migration provide tools for both countries of origin and destination to manage migration flows and ensure adequate protection for this category of workers.

The very first it was Convention concerning Migration for Employment adopted in 1949 (No. 97) which applies to migrants for employment who are recruited under Government-sponsored arrangements for group transfer (49 ratifications of Convention No 97). Very important convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers was Convention adopted on 24 June 1975 by the General Conference of the ILO at its sixty session (No. 143). The Convention emphasizes that Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers. Sadly only 23 countries have ratified Convention No 143. ILO has also issued recommendations concerning Migration for Employment (No. 86) in 1949 and concerning Migrant Workers (No.151) in 1975. The protection of migrant workers has already started at the end of the 40's when ILO has adopted convention in which member states were obliged to facilitate international migration for employment by establishing and maintaining a free assistance and information service for migrant workers and taking measures against misleading propaganda relating to emigration and immigration.

The United Nations bodies first voiced concern about the rights of migrant workers in 1972, when the Economic and Social Council expressed alarm at the illegal transportation of labour to some European countries and "in conditions akin to slavery and forced labour" [resolution 1706 (LIII)]. In 1972 too, the General Assembly condemned discrimination against foreign workers and called upon Member States to end such practices and to improve reception arrangements for migrant workers [resolution 2920 (XXVII)]. Four years later – the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a report on the exploitation of labour through illicit and clandestine trafficking, which recommend the drawing-up of a United Nations convention on the rights of migrant workers (*The International Convention on Migrant Workers and its Committee. Fact Sheet No. 24 (Rev. 1)*, New York and Genewa 2005, p. 2). This recommendation was echoed in General Assembly resolution 33/163 (1978) and resolution 34/172 (1989) both titled: „Measures to improve the situation and ensure the human rights and dignity of all migrant workers". Following the adoption of resolution 34/172, a working group open to all Member States was established in 1980 to draw up a convention. The working group finished drafting the International Convention on the Protection of the Rights of All

Migrant Workers and Members of Their Families in 1990. Convention has been adopted by General Assembly resolution 45/158 of 18 December 1990. After 1990, General Assembly adopted around 50 resolutions on protection of migrants, including migrant workers, for example: Resolutions „Violence against women migrant workers" adopted in: 2015 (70/130), 2011 (66/128), 2009 (64/139), 2007 (62/132), 2005 (60/139), 2003 (58/143), 2002 (56/131), 2000 (54/138), 1996 (50/168). But the most important United Nations legal act which protect the widest range of migrant workers rights is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from 1990.

3. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

a) Status of ratification

The Conventions primary objective is to protect migrant workers and their families from exploitation and the violation of their human rights. This legal act entered into force in July 2003, because the Convention required a minimum of 20 ratifications before it could enter into force. This threshold was reached when El Salvador and Guatemala ratified it on 14 March 2003. So far the Convention has been ratified by 48 states[2]. The most of them are situated in Africa and South America. So far, countries that have ratified the Convention are primarily countries of origin of migrants (for example Mexico, Morocco or the Philippines). For these countries, the ratification of the Convention was very important as a vehicle to protect their citizens living abroad. For example in the Philippines ratification of the Convention took place in a context characterized by several cases of Filipino workers being mistreated abroad. Such cases hurt the Filipino population and prompted the ratification of the Convention (*Information Kit. United Nations Convention on Migrants' Rights. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, UNESCO 2005, p. 11). There are also 18 countries which have signed the Convention but not ratified yet. On the other hand – there are 132 countries in the world with no action, despite the fact that the migrants rights violation is a serious problem today.

What is interesting – none of European Union countries has ratified the Convention. Many EU Member States consider that the Convention does not distinguish sufficiently between the rights of regular and irregular migrants.

They argue that is the reason why its ratification would entail the obligation of States to grant too many rights to migrants who do not have a legal status in the country (Touzenis, Sironi, 2013, p. 24). Many European States also argue that the Convention infringes upon States sovereignty in limiting their competence to decide upon entry and stay of migrants. What is more, a number of European States are concerned about the fact that the Convention may be an incentive to irregular stay because its provisions aim to legalize the illegal workforce (in details see: Plaetevoet, Sidoti, 2010). Many countries consider that the rights enshrined in the Convention are protected already in other international, regional instruments or in national law. There are also financial and administrative obstacles[3].

Summarizing, countries that are destination countries do not want to ratify the Convention and take on new obligations. That is the reason why states that have ratified the Convention are primarily countries of origin of migrants.

b) Scope and definitions

The scope of the Convention is very wide. The Convention is applicable to all migrant workers and members of their families without distinction of any kind. What is more the Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence (art. 1)

No other international legal instrument defines the term "migrant" in such a comprehensive way, as the Convention do. Article 2 (1) defines a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". The Convention also explains who is treated as a migrant workers family member. The term ''members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned (art. 4).

The Convention innovates by defining the rights which apply to certain categories of migrant workers and their families, including: all migrant

workers, legal workers, frontier workers, seasonal workers, itinerant workers, migrants employed for a specific project and self-employed workers.

c) Specific protection of all migrant workers and members of their families

The Convention affirms human rights spelled out in the other core human rights treaties. On the other hand – Convention includes a number of rights addressing specific protection needs and providing additional guarantees in the light of the particular vulnerability of migrant workers and members of their families. Part III of the Convention (arts. 8 to 35) grants a fairly broad series of rights to all migrant workers and members of their families, irrespective of their migratory status. We can find there: the right to life (art. 9), the prohibition of torture (art. 10), the prohibition of slavery and forced labour (art. 11), the right to liberty and security of person and to procedural guarantees (arts. 16–19 and 24), the right to freedom of opinion, expression, thought, conscience and religion (arts. 12–13), prohibition of arbitrary interference with privacy, home correspondence and other communications and prohibition of arbitrary deprivation of property (arts. 14–15), the right to just and favorable conditions of work and to rest and leisure (art. 25), the right to social security (art. 27) and the right to education (art. 30).

However most of the provisions of the Convention refers to the specific situation of migrant workers and guarantees them extra protection. Migrant workers and members of their families shall be free to leave any State, including their State of origin as well as have the right at any time to enter and remain in their State of origin (art.8). Article 15 protects migrant workers from the arbitrary deprivation of property. What is more – article 21 contains safeguards against confiscation, destruction or attempts to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits and prohibits the destruction of the passport or equivalent document of a migrant worker or a member of his or her family. Also specific to the particular situation of migrant workers is article 22, which provides, inter alia, that migrant workers and members of their families shall not be subject to measures of collective expulsion and that they may be expelled from the territory of a State party only in pursuance of a decision taken by the competent authority in accordance with the law. Article 23 spells out the right of

migrant workers and members of their families to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin whenever the rights recognized under the Convention are impaired. Article 25 of the Convention establishes that migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration and other conditions of work and terms of employment. Article 26 recognizes the right to take part in meetings and activities of trade unions and freely join them.

The Convention also applies to living conditions of migrant workers, which are often unsatisfactory. Article 27 of the Convention stipulates that, with respect to social security, migrant workers and members of their families shall enjoy the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. What is more – article 28 guaranteed that migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment. The Convention also guarantees the right of every migrant workers child to access to education on the basis of equality of treatment with nationals of the State concerned.

States parties have to ensure respect for the cultural identity of migrant workers and members of their families and not to prevent them from maintaining their cultural links with their State of origin (art. 31). Migrant workers and members of their families shall also have the right to transfer their earnings and savings as well as their personal effects and belongings (art. 32). Finally, according to article 33, migrant works and members of their families shall have the right to be informed of their rights arising out of the Convention as well as of the conditions of their admission and their rights and obligations under the law and practice of the State concerned. These obligations are placed not only on the State of employment but also on the State of origin and on the State of transit. State parties shall take appropriate measures to disseminate the said information, which shall be provided free of charge and, as far as possible, in a language that the migrants and their families are able to understand.

d) The rights granted to documented workers

The rights granted to documented and undocumented workers are not identical. The Convention assigns additional rights to migrant workers and members of their families who are documented or in a regular situation. This could be a way to discourage illegal migration.

Documented workers have the right to be temporarily absent, for reasons of family needs and obligations, without effect on their authorization to stay or work (art. 38); they also have the right to liberty of movement in the territory of the State of employment (art. 39). Workers in a regular situation have the right to be fully informed by their States of origin and employment about conditions applicable to their admission and concerning their stay and the remunerated activities they may engage in (art. 37), and the right to form associations and trade unions (art. 40). The Convention guarantees some extra political rights to documented workers: right to participate in the public affairs of the State of origin, in accordance with its legislation and right to vote and to be elected in the State of origin, in accordance with its legislation (art. 41).

Furthermore, documented migrant workers and members of their families enjoy the same opportunities and treatment as nationals in relation to various economic and social services (arts. 43 and 45), in the exercise of their remunerated activity (art. 55), in the choice of their remunerated activity (subject to some restrictions and conditions) (art. 52) and in respect of protection against dismissal and the enjoyment of unemployment benefits (art. 54).

Documented migrant and members of their families also enjoy exemption from import and export taxes on their household and personal effects (art. 46) and shall not be liable to more onerous taxation than nationals in similar circumstances (art. 48). Article 47 provides that migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State.

In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favorably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay, taking into due account the length of time they have already resided in that State (art. 50). Finally, documented migrant workers and members of their families enjoy additional guarantees against expulsion (art. 56).

The Convention extends rights to regular migrant workers and members of their families, notably in the equality of treatment with nationals of States in a number of legal, political, economic, social and cultural areas.

4. The Committee on Migrant Workers

The implementation of the Convention rests with its States parties. Article 72 provides that this process is monitored by a committee – the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee consist of 10 experts, elected by the States parties. The Committee meets in Geneva and normally holds two sessions per year. It held its first session in March 2004 (*Committee on Migrant Workers,* http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIntro.aspx [20.06.2016]).

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every five years. The Committee will examine each report and address its concerns and recommendations to the State party in the form of "concluding observations". This is a great forum to expose abuses, inequity and discrimination.

Article 77 of the Convention gives the Committee competence to receive and consider individual communications alleging violations of the Convention by States parties who made the necessary declaration under article 77. This individual complaint mechanism will become operative when 10 states parties have made the necessary declaration under article 77**.** So far there are only four countries: Mexico, Turkey, Uruguay and El Salvador so the individual complaint mechanism has not yet entered into force (status of ratification from website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en#2 [26.06.2016]).

The Committee organizes days of general discussion. What is more – it can publish statements on themes related to its work and interpretations of the content of the provisions in the Convention (general comments).

5. Special Rapporteur on the Human Rights of Migrants

The mandate of the Special Rapporteur on the Human Rights of Migrants was created in 1999 by the Commission on Human Rights (resolution 1999/44). The Special Rapporteur deals with the protection and the proclamation of the rights of migrants including migrant workers. What is important –

the mandate of the Special Rapporteur covers all countries, irrespective of whether a State has ratified the Convention. This body is a forum empowered to prevent abuses, inequity and discrimination, protect the most vulnerable, and expose perpetrators. The mandate of the Special Rapporteur is a real mechanism that can operate around the world. What is more – the Special Rapporteur does not require the exhaustion of domestic remedies to act.

The main functions of the Special Rapporteur are: „(a) to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants (…); (b) to request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their family, (c) to formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur; (d) to promote the effective application of relevant international norms and standards on the issue; (e) to recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants" (see: *Special Rapporteur on the human rights of migrants*, http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx, [20.06.2016]).

Everyone can send to the Special Rapporteur information regarding individual cases of alleged violations of the human rights of migrants or information regarding general situations concerning the human rights of migrants in a specific country. The Special Rapporteur send urgent appeals and communications to concerned Governments to clarify or bring to their attention these cases. The Special Rapporteur also conducts country visits upon the invitation of the Government. From 2000 to end of 2014 the Special Rapporteur undertook 31 visits (including 3 missions to Italy, 2 in Mexico, Malta, Greece, Turkey, etc. – see all missions: Visit undertaken and reports, http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CountryVisits.aspx, [20.06.2016]). The Special Rapporteur also presents annual reports to the Human Rights Council in which informs of the country visits he has undertaken, the communications he has sent, and other activities undertaken. What is more, the Special Rapporteur cam formulate recommendations on a chosen topic in a field of the protection of the human rights of migrants.

Due to the fact that the mandate of the Special Rapporteur operates throughout the world, provides a great forum for the exchange of information on violations of the rights of migrants and their families.

Summary

The Convention provides a wide range of rights of migrant workers and their families. What is more – we have to remember, that migrant workers have the same rights as every human being regardless of their status. In relation to the Convention migrant workers have the following types of rights:

- ⇨ human rights guaranteed in the basic acts of human rights
- ⇨ specific rights to the particular situation of all migrant workers
- ⇨ other rights of migrant workers and members of their families who are documented or in a regular situation.

The Convention is a comprehensive international treaty focusing on the protection of migrant workers' rights. It emphasizes the link between migration and human rights – a policy topic that is drawing increasing attention worldwide. The Convention provides an international definition of migrant workers, and categories of migrant workers. It also guarantees minimum universal human rights standards for all migrant workers, not only documented but also undocumented.

The biggest problem faced by the United Nations is a small number of countries that have ratified the Convention. There are many myths about obstacles to ratification the Convention. Some countries maintain, that their national legal acts protects migrant workers in a satisfactory way. Some of them do not see the need to legislate on this topic, because they have a small number of migrant on their territory. In my opinion – the Convention is not well known, what is a problem too. Finally there are broader social, economic and political boundaries for ratification of the Convention.

All of this caused that the Convention only entered into force in July 2003. What is more – the individual complaint mechanism has not yet entered into force, which makes that the Committee on Migrant Workers has a limited capacity. Universal system of human rights doesn't meet today's expectations. The UN organization has a great tool to protect human rights of migrant workers, but they are not fully used by Member States.

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Endnotes

[1] International Labour Organizations presents global estimates on migrant workers in 2013. According to ILO there were 232 million international migrants in the world in 2013. 207 million of them were of working age, 15 years old and over. Of these migrants, 150 million were working or economically active.

[2] As of May 2015, the following 48 states have ratified the Convention: Albania, Argentina, Algeria, Azerbaijan, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, East Timor, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guyana, Guinea, Honduras, Indonesia, Jamaica, Kyrgyzstan, Lesotho, Libya, Madagascar, Mali, Mauritania, Mexico, Morocco, Mozambique, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, Saint Vincent and the Grenadines, Syria, Tajikistan, Turkey, Uganda and Uruguay (source: http://indicators.ohchr.org/ [8.06.2016]).

[3] For Example Poland indicates that referring to the limited level of immigration and emigration which do not require the establishment of further services as requires by the Convention. Source: Reply of Poland to Recommendation No. 24 in National Report of Poland, 8 March 2012, para. 106 (http://www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession13.aspx [20.06.2016].

The right of migrant minors to high quality education

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Abstract

Subject of research: 25 years ago Poland became a party of the Geneva Convention of 1951 on refugee status and the New York Protocol of 1967 and since then it has been obliged to give shelter to those who come to Poland searching of safety and conditions for dignified life.

Under EU programs of refugee relocation within the years 2016–2017 there should have been resettled about 7,000 migrants to the territory of Poland, among whom a significant number are families with children. The paper reflects on the question how far Polish system of education is well-equipped to help migrant children exercise the right to high quality education.

Purpose of research: To indicate the strength and weaknesses of legal instruments, to define knowledge concerning education of foreign children and the competences teachers should have to work in multicultural classes, and to identify any progress in the development of conceptual framework of national strategy on the migrant minors' education.

Methods: The paper builds on the analysis of national legislation and on available statistical data on foreign pupils learning in Polish schools as well as on national and international surveys on integrating pupils with an immigrant background into their new school communities. The work is a starting point for qualitative and quantitative research on what schools and teachers can and should do to put theory into practise.

Keywords: foreign children**,** education**,** school, teacher, competence.

Introduction

International research findings indicate that education should be both easy accessible for migrant minors as it gives a chance of completing full-cycle formal education programmes, and apparent to their parents, especially to those who had little or no contact with formal education. Otherwise, "attendance and completion rates in displacement suffer" (Migration Policy Debate, 2015, p. 50).

Among foreign children receiving education in the Polish system of education, there can be distinguished at least two categories: refugees and immigrants. Both of them are of different legal status and needs related to education as according to their families' plans, some of the children settle down in Poland while the others just stay temporarily. As majority of them do not speak Polish, they have to in a short time acquire knowledge of the language of education and catch up to the performance of their Polish peers and overcome the problems with adjusting to a new school and social environment.

The number of migrant minors in Polish schools, as indicated further in the paper, is not significant currently – it does not exceed 0,35% of all the pupils at all levels of education. Despite some schools where nearly 10% of their whole pupils population are migrant minors, especially in those situated close to the accommodation centres, it seems that the issue of the children presence in mainstream schools is still considered as a challenge for the few schools in some regions but not to the whole system of education. Under EU programs of refugee relocation within the years 2016-2017 there should have been resettled about 7,000 migrants to the territory of Poland, among whom a significant number are families with children. In Poland, in general, there are no legal obstacles in providing education to refugees' and immigrants' children. However, as research findings show, schools still face new problems and challenges every day. That is why, that seems to be reasonable to find out what has been done within the last decade to adjust the Polish system of education to the new reality.

The first part of the paper presents the results of the analysis of the existing law regulations, in the context of the implementation of international commitments made by Poland to provide access to education for all immigrant children. In the next part access to education system in practice is analyzed in terms of admission to schools, measures made to support pupils and the competences teachers should have to work with and for the children. Finally, work that has been done towards development a national plan or strategy on migrant minor's education is presented.

1. Legal bases

As Party to the Convention on the Rights of the Child Poland is obliged to make "primary education compulsory and available free for all" and "different forms of secondary education available and accessible to every

child", including "offering financial support in case of need" (CRC, art. 28). Poland also agreed to provide education that guarantees "the development of the child's personality, talents and mental and physical abilities to their fullest potential" as well as the development of the child's respect to the culture, language and values of the country of his or her origin (CRC, art. 29).

As Party to the Convention of 1951 relating to the status of refugees (art. 22), Poland is obliged to grant access to public elementary education to refugee minors under the same conditions as to Polish ones, and to other levels of education – on conditions as favourable as possible, but not less favourable than that accorded to other foreigners generally.

According to Council Directive 2003/9/EC (art. 10), EU member states are obliged to "grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced" and not to "withdraw secondary education for the sole reason that the minor has reached the age of majority". The States have also agreed not to postpone the access to education for more than 3 months. The period may be extended to one year if the time is devoted to specific education which facilitates access to the education system. States may offer other education arrangement if a specific situation of the child makes access to education system impossible. Council Directive 2004/83/EC (art. 27) calls on Member States to grant refugee minors and those with subsidiary forms of protection full access to education under the same conditions as their nationals. According to Directive 2013/33/EU (art. 14) States are under obligation to grant to minor children of applicants for international protection and to applicants who are minors access to the education system under similar conditions as their own nationals, and not to withdraw secondary education if the only reason is that the child has reached the age of majority. The directive also says about the obligation to facilitate the children's participation in the education system by providing preparatory classes, including language classes, and to offer other education arrangements, if the children's specific situation makes access to education system not possible. Council Directive 77/486/EEC (art. 2) imposes on the States the obligation to offer free teaching of their official language to the children of migrant workers, to train teachers who are to provide this tuition and to promote the teaching of the native language and culture of the country of origin of the children.

With regard to the access to education, Polish legislation complies with international legal instruments of human rights protection. Pursuant to Polish Constitution (Konstytucja RP, art. 70) each and every person has the right to education. The wording "each and every" means not only Polish citizens, but also foreign nationals residing in the territory of the Republic of Poland. The right of foreign nationals to participate in the Polish education system is detailed in the Act on Education System (USO, especially art. 94a). Foreign nationals have an access to learning and care in all types of public kindergartens and schools until age 18 or completion of upper secondary school on the conditions applicable to the citizens of Poland. None of the provisions of the Act restrict the access of foreigners to private schools and educational institutions. The conditions and rules of exercising the right to education are listed in the Regulation of the Minister of National Education of 30 July 2015 on conditions and procedure of admission of non-Polish nationals and of Polish nationals who have attended schools operating in the education systems of other countries, to public kindergartens, other forms of preschool education, schools and institutions, as well as on organisation of additional Polish language teaching and additional remedial classes and on teaching the language and culture of the country of origin (MEN 2015).

According to Polish law, pupils are admitted to primary and secondary schools on the basis of foreign documents which confirm the amount of years of schooling. In case of lack of such documents, the minor is qualified to the appropriate class on the basis of an interview conducted in Polish or in a foreign language which he or she speaks. The procedure of the recognition of foreign certificates is not carried out, if their owners intend to continue studying in Poland (with the exception of post-secondary schools).

What is more, the provisions of the Act on Education System provide for foreign pupils subject to compulsory school education or obligation of learning and who do not know the Polish language or the level of which is insufficient to learn, the right to additional free Polish language in the amount of 2 hours per week as a minimum. The lessons are organized by schools in cooperation with the school local authorities. The learning lasts as long as a given pupil's needs concerning the linguistic competences are fulfilled. It is worth mentioning here, that Polish law goes even further than EU standards, because free education of the Polish language is guaranteed to all children subject to schooling obligation – and not just the children of EU nationals. In

addition, foreign minors are granted the right to the assistance provided by a person who speaks his or her native language, and who is employed in the school – for a period not longer than 12 months.

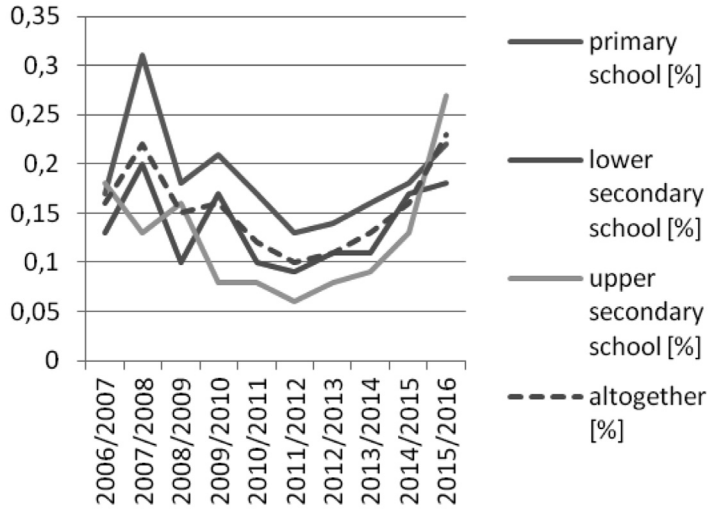
The children have also the right to additional remedial classes, on the request of the teacher who provide education in a given subject. The lessons are held individually or in groups, 1 hour per week for a period not longer than 12 months. The total number of hours of additional Polish language and remedial classes may not exceed 5 hours per week.

For the pupils of foreign nationality, subject to compulsory schooling, Polish legislator also provide the possibility of organizing in schools tuition of their native languages and cultures of origin.

2. Access to the education system in practice

The data for the last 10 years indicate a very low number of foreign pupils who benefited from the Polish system of education. Between the school years 2006/2007 and 2015/2016 the percentage of the pupils did not exceed: in primary schools – 0,35%, in lower secondary schools – 0,2% and in upper secondary schools – 0,3%.

Foreign pupils in Polish schools in the school years 2006/2007 – 2015/2016



Source: own elaboration, on the basis of Education Information System data (SIO).

Despite the optimistic statistics, new legal solutions have been introduced successively. They result in better school management and the development of close cooperation between schools and local communities to facilitate and speed up the migrant children integration to the new environment. Since January 2010, due to amendments to article 94a of the Act on Education System, the procedure of admission foreign nationals to schools is substantially simplified.

Nevertheless, schools which work with the foreign pupils almost every day face new challenges. The situation of migrant minors has been monitoring regularly both by governmental agencies and non-governmental organizations which work for and with the children as well as by independent institutions for human rights protection. In the context of the right to education most of attention they devote to the foreign minors who are not citizens of Europe and who live in the accommodation centres. According to the bounding law, migrant minors are enrolled to public district schools – which are located near the place of their residence. These schools are obliged – ex officio – to provide them conditions for learning. The problem appears when a big group of the children should start learning at the school at the same time. The situation results in a kind of disorder in the school functioning – both in terms of safety and the process of learning. International researches findings confirm that concentration of migrant children in schools hinders their academic performance (European Commission, 2008, p. 80).

In the studies commissioned recently, Polish Ombudsman suggests the "abandonment of sending migrant minors to schools which are closet to the centres of accommodation" (Piechowska, 2015, p. 35) and recommends the adoption of uniform rules for the selection of schools to teach the minors (Sośniak, 2013, p. 49). Addressing to the problem, the Minister of National Education has prepared a draft of amendments to the Act on Education System (the bill was submitted to the Sejm on 2 June 2016) which says about the possibility of indicating a student who comes from abroad, as a place of compulsory education a school other than the district school. The proposed provision anticipates that in cases of an influx of a large number of people coming from abroad at the same time, particularly in the framework of organized groups (e.g. evacuation, repatriation, relocation, resettlement) and the limited capacity of a given primary or secondary district school, the authority that runs such school may direct migrant children to another

school located in the same or neighbouring community (gmina) or county (powiat), on the agreement between the local government units. In case of lack of such agreement, the decision on the school where the children will be enrolled takes Education Superintendent. The costs of travel of the foreign pupils to the school shall be borne by the municipality where the pupils live (Druk nr 559).

3. Teaching the Polish language

Language as a basic means of communication is usually the first of several challenges foreign pupils face when entering an education system of a host country. The role of schools is to create the right conditions and atmosphere for them to learn. Findings of many researches and monitoring concerning the situation of foreigners at Polish schools (Gmaj, 2013, p. 11; Chrzanowska, 2009, p. 4–5, Todorovska-Sokolovska, 2010, p. 8, Sośniak, 2013, p. 20–21) indicate, that the most serious problem of children of foreigners who enter the Polish system of education is lack of or little knowledge of the Polish language. On one hand, that makes it difficult to assess the level of students' knowledge. And on the other hand, for the children – that means great difficulty in mastering the compulsory educational material. That always results in lagging behind their Polish peers. So, extremely important is to support these pupils simultaneously on several levels, inter alias, by providing conditions for learning the Polish language as the second language and for integration with the Polish peers. Additionally, teachers should build good relations with the pupils' parents, and assist them in functioning in the new society.

In this context, there should be emphasized that for most of the pupils Polish is a second language of communication – at school (language of education) and with the new community. The term „Polish as second language" has been introduced quite recently. According to Professor Władysław Miodunka, that means teaching Polish to immigrant and refugee minors and member of national minorities, who use in the family environment a language other than Polish. Living in Poland, foreign children learn Polish through the operation in the country reality and not only in the school environment. For the children it is the second basic tool for communication (after the mother tongue), and not just one of foreign languages they learn/use only in the classroom.

In the EU there are two models for the migrant children admission to the education system of the host country. In the integration model – the

children attend regular school educational activities from the moment of their admission to school, no matter they speak or do not speak the language of instruction. And they learn the language on the classes taken as additional once. In the separation model – the minors attend preparatory classes, usually for 12 months, to master the language sufficiently to participate actively in compulsory classes. In Poland, an integrative model of education operates. Migrant minors subject to the obligation of school education or the obligation of learning have the right to additional Polish language teaching on a non-payable basis (USO, art 94a). In the years 2006/2007 – 2015/2016 the numbers of migrant minors who participated in the additional language lessons were as follows: at primary schools – 8248 migrant pupils (19,13% of all of them at these schools), at lower secondary schools – 2679 migrant pupils (15,59% of all of them at these schools), at upper secondary schools – 3286 migrant pupils (13,33% of all of them at these schools) (Source: own elaboration, on the basis of Education Information System data (SIO)). Taking into consideration the total number of migrant minors who benefit from the system of education, it does not seem that the situation requires any urgent measures to be taken besides regular monitoring. However, quite sizeable bases of educational materials and tools for teachers who work with the group of the pupils have been prepared both by governmental agencies and non-governmental organizations. They are available free of charge, also in electronic versions. To most of them are attached curricula of teaching Polish as a second language to pupils at each level of education. Some of them include recommendations for schools concerning the teachers' qualifications and competencies e.g. that the Polish language lessons as a second language should be led by teachers with relevant qualifications (glottodidactics). In case of lack of such a specialist at school, the tuition should be provided by a foreign language teacher, as the methodology of teaching the native language is fundamentally different from the methodology of teaching foreign languages. Furthermore, in addition to linguistic competence the teacher should have an interactive and didactic competences (Bernacka-Langier, 2010, p. 19-20; Strzelecka, 2010, p. 12; Szybura 2016, p. 117).

To support school teachers and educators in teaching the Polish language, a framework program of the Polish language courses for foreigners was prepared in 2011 (MEN 2011). The Framework programme

is the basis for the development of such courses programmes, tailored to the age, origin, needs and abilities of the courses participants. It was developed in accordance with the principles of glottodidactics in a clear and understandable manner for its recipients and it takes into account the cultural differences between various groups of foreigners. The framework program is compliant with the Common European Framework of Reference of Languages.

When analysing the significance of providing the tuition of Polish as second language, it is worth noticing the suggestions to increase the minimum amount of hours per week devoted to the lesson, to set up new regulations on that teaching standards and qualifications of the teachers, and to include the teachers into the list of regulated professions (Sośniak, 2013, p. 53–54; Kosowicz, 2007, p. 25–26; Szybura, 2016 p. 117).

4. Remedial classes

Migrant minors subject to the obligation of school education or the obligation of learning who arrive in Poland from a foreign education system can participate in additional free of charge remedial classes. With the remedial classes, they have a chance to gradually eliminate the gap in the knowledge they should acquire in accordance with the core curriculum instruction for a given school subject and stage of education. It is also important for the parents of Polish pupils who sometimes perceive the appearance of foreign children at school as a risk of lowering the quality of education of their children (Chrzanowska, 2009, p. 4).

In the school years 2010/2011 – 2015/2016 the numbers of migrant minors who attended additional remedial classes were as follows: at primary schools – 2082 migrant pupils (4,83% of all of them at these schools), at lower secondary schools – 848 migrant pupils (5, 58% of all of them at these schools), at upper secondary schools – 1027 migrant pupils (4,17% of all of them at these schools). The number of migrant minors who participate in the additional lessons is gradually but steadily growing. Totally, the percentage of pupils of primary and secondary schools who participated in the Polish language lessons changed from 3,77% in 2006/2007 to 33,39% in 2015/2016 and of those who attended the remedial classes for given school subjects from 7,47% in 2010/2011 to 10, 96% in 2015/2016. The changes in the percentage of pupils who participated in the additional Polish language

lessons at each of the levels of education are as follows: in primary schools – from 6, 85% in 2006/2007 to 37, 5% in 2015/2016, in lower secondary schools – from 3, 03% in 2006/2007 to 39, 05% in 2015/2016, in upper secondary schools – from 0, 8% in 2006/2007 to 25, 87% in 2015/2016. The changes in the percentage of pupils who attended the additional remedial classes at each of the levels of education are as follows: in primary schools – from 7,98% in 2010/2011 to 11,35% in 2015/2016, in lower secondary schools – from 7,02% in 2010/2011 to 18,24% in 2015/2016, in upper secondary schools – from 6,58% in 2010/2011 to 7,39% in 2015/2016 (Source: own elaboration, on the basis of Education Information System data (SIO). In terms of quality of education and academic performance of the pupils, it seems indispensable to find out the reasons of such situation. Studies will cover the both the school communities and the migrant children and their families.

The financial resources required to implement the solutions mentioned above are covered by the educational subsidy. In the case of additional classes of Polish language the base amount per pupil (for schools whose pupils participate in the classes) in 2016 is 150% higher than for other pupils. Between 2010 and 2015 the amount was from 20% to 150% higher, depending on the total number of pupils in classes in the school. The amount is specified for particular years in regulations of the Minister of National Education on the distribution the educational part of the general subsidy for local government units.

5. Way to integration

Since 2010 there is a possibility to employ at Polish schools a *culture assistant* – a person who speaks the language of the country of origin of the minor, whose work is to support the pupil in learning and facilitate his or her integration with the school community. The person also helps the teacher to understand migrant pupil and important aspects of his or her culture of origin and to set cooperation with the parents of the pupil. This assistance is provided for a period of 12 months at maximum. Some research findings show that the *culture assistant* makes that many problems the schools have hardly coped with become easier to solve. There also suggestions that, in those schools where foreign children learn or at least in these schools where there are more than 25% of foreign pupils, and many of them are just starting to speak Polish, the employment of the *culture*

assistant should be a rule. That would ensure a high quality of teaching both Polish children who could implement the school program without any delays, and foreign children who might have a chance to catch up with their peers' level of skills faster (Chrzanowska, 2009, p. 10–11; Sośniak, 2013, p. 54). As other research finding notice, the promotion of the possibility to employ the *culture assistant* at school is still necessary. Even if schools know about the introduction of a new solution, they are not confident of the consequences and requirements of its implementation (Strzelecka, 2010, p. 11–12; Kawa, 2014, p. 10–14). As the provisions of the Act on Education System do not give a clear decision on the conditions of such a person employment, including qualifications they should have, and due to the practice that shows that the majority of people employed as the assistant do not have pedagogical training or their education is not recognized in Poland, the findings also emphasize an urgent need to develop a system of training of such people who work as a *culture assistant*.

6. Examination

In terms of academic performance of the migrant pupils, for many years there have been formulated recommendations concerning the improvement of the system of foreign pupils' assessment, especially of those who have just entered the new system of education. It the opinion of some social researchers and legal and linguistic experts (Gmaj, 2006, p. 20; Kosowicz, 2007, p. 37–40; Chrzanowska, 2009, p. 11; Strzelecka, 2010, p. 12; Szybura 2016 p. 117), it seems reasonable to establish special conditions to help the foreign pupils to accede the external tests and exams, inter alias, by extension the time provided for the exams, introduction separate criteria of assessment. They put stress on the fact that due to little knowledge of Polish and sometimes previous little contact with regular education, the pupils either fail external exams or pass at a very low level. It is frustrating for them because the results rarely reflect the effort they made to learn and because they have little chance to continue education in a good school. In addition, the situation influences the community attitude to the foreign pupils because their performance is a part of the whole school education outcomes (Chrzanowska, 2009, p. 11).

In the analysed reports there were also suggestions of exempting migrant children from external evaluation (Piechowska, 2015, p. 36) and to set up

minimum requirements for foreign pupils concerning the core curriculum content and specific criteria for assigning the foreigners (Sośniak, 2013, p. 52). However, considering remark of European Commission that "Low teachers' expectations towards minority students generally have a negative influence on their performance" (European Commission, 2008, p. 82) that kind of support for migrant pupils should not be promoted.

7. Language and culture of the country of origin

European countries in various ways carry out the obligation of teaching the language and culture of the country of origin of immigrant children. The educational systems of some countries support the pupils in nurturing the native language, for example, by providing trainings and courses in the language and culture of the country of origin and in the effective cross-cultural communication with the parents-immigrants. Several countries (France, Belgium, Spain, Luxembourg, Germany, Portugal and Slovenia) have signed bilateral agreements on language support of immigrant children. According to the agreement, the country of origin of foreigners employs teachers, and the host country provides the equipment. The educational system of the United Kingdom, the Netherlands, Spain, Greece and Poland generally do not support financially such courses (Todorovska-Sokolovska, 2010, p. 7–9).

According to the Act on Education System, schools are obliged to support migrant children to preserve their native language, national and religious identity (USO, art. 13). The right of parents to bring up their children in compliance with their religion and culture is guaranteed in the Polish Constitution (Konstytucja RP, art. 48). According to the Act on Education System, teaching the language and culture of the country of origin may be organized for foreigners in Polish schools by the diplomatic and consular establishments of the country of origin of those pupils or by cultural and educational associations of the particular nationalities. Schools provide classrooms and teaching aids on non-payable basis. The teaching may take place if interest expressed at least seven pupils. According to previous regulation (of 2010), such activities might take place if the interest expressed at least 15 foreign pupils, which means some progress. The total number of hours devoted to teaching the language and culture of the country of origin may not be higher than 5 teaching hours per week.

8. Teacher competences and assistance needed

Findings of researches and monitoring that were made a few years ago (e.g. Chrzanowska, 2009, p. 11; Strzelecka, 2010, p. 4-5, 13) indicate that the competences of the teachers who work with foreign minors should cover at least the following issues: how to work in a multicultural school (cultural differences, linguistic skills, openness and tolerance) which is particular important when considering that teachers often have a serious problems in dealing with foreign parents; what legal status and how affects the duties and privileges of migrant pupils; sensitivity to discrimination among pupils and how to integrate the whole school community, including parents. There is also a remark that little support the teachers get from school educators and school psychologists. The reason is that these professionals are not sufficiently trained to work in a multicultural environment. In this context it has been highlighted the need of close cooperation of teachers with school pedagogue and teachers of different subjects with the teacher prepared to teach the Polish language as a foreign language. The general conclusion is that methodology of working with culturally different pupils as well as teaching Polish as a foreign language should be a permanent part of in-service teacher training process.

To address the teachers urgent needs, in 2010 the Education Development Centre in Warsaw started the *Education to the challenges of migration* project under which selected experts were prepared to act as regional coordinators. Their task is to improve the intercultural competence of teachers, inspiring, organizing and coordinating the efforts of intercultural education in the provinces and to monitor and support schools in the overall activities for foreign pupils and their families.

In addition, publications have been regularly developed on how to educate and support children from different cultures, directed to school teachers and specialists in psychological and pedagogical institutions. Diverse educational material currently available give the teachers a wide range of solutions to the problems they face while working with foreign pupils, including examples of activities directed to Polish parents to improve their knowledge about refugees and migration.

9. Towards national strategy

Integrating immigrant pupils into schools is a challenge for most countries, however, as research findings indicate a country's success in integrating

immigrants' children into society is a key indication of the efficacy of social policy in general and education policy in particular (PISA 2012, p.71). In the opinion of Anna-Carin Öest, the representative UNHCR Office, Poland has a very good solution when it comes to providing immediate access of foreign children to the education system, particularly because the right to education is treated in Poland not only as a right but also as a duty. She also claims that the Polish legislation in this regard is the best among all of those which are in force in Central Europe (Oświata ABC).

Schools in various parts of the world operate on different principles; different is the relationship of teachers with pupils and expectations for pupils' behaviour. As A. Chrzanowska states, migrant children need a lot of time and support of teachers and peers to understand and assimilate the rules. Lack of preparation of school communities to welcome the pupils of different cultural background often leads to serious misunderstandings. She also underlines that the behaviour of the foreign child has been often interpreted as his or her lack of good manners, as signs of arrogance or even aggression. From this point of view, it is extremely important to implement multicultural education in schools and adopt the principle that all cultures are equal. In this context, she recommends that issues related to human rights and multicultural education should appear in the curriculum at all levels of education (Chrzanowska, 2009, p. 6,11).

Despite the presence of human rights education in the core curriculum, intercultural education has not been introduced in schools widely yet. Nevertheless, due to European trends, the issue is becoming more and more significant also in Poland. In the context of enhancing the role of schools in shaping attitudes necessary for active cooperation in the world diverse culturally and ethnically, in 2014 a cross-sectoral team of experts in intercultural education was appointed (within *Diversity in (among) us* project.") to develop the Framework for Intercultural Competence in the Polish System of Education. Work on the Framework was completed in August 2015. It comprises four main areas: 1. The ideas and concepts – Defining common, specific concepts of intercultural education for the Polish education system, including the definition of intercultural competencies of pupils and indicators for their measurement at different stages of education. Indication of the objectives of intercultural education. 2. Educational policy – Alignment with the needs and requirements of Polish reality, including

regulations concerning the operation of pupils of different nationalities in the Polish school. Determine the rules for granting psycho-pedagogical support to pupils of different nationalities. Inclusion of parents in the process of cultural adaptation of pupils. The discussion on the potential recognition of intercultural education is indicated as one of the priorities of educational policy. 3. The education and training of the teaching staff as a coherent system – Establishing consistent guidelines for the inclusion of intercultural education in the education and training of teachers. Involvement in the process of training in the field of intercultural education the teaching staff, including school principals. Defining intercultural competence for teaching staff. Developing a coherent, comprehensive educational offer for the group. Determination of the place of intercultural education in the curriculum, along with possible models of its implementation at all levels of education. Development and dissemination of materials and methodological guidelines for teachers to work with pupils and parents. 4. Create an environment conducive to the development of competencies – Create agreements and cooperation for the development of intercultural competence of pupils, including local government units, non-governmental organizations and other institutions dealing with issues of intercultural education (Rafalska, 2016, p. 11–14).

In the school year 2015/2016 a network of regional coordinators was set up – a team of 14 experts, trainers of intercultural education to support schools and educational institutions in their work. One of the tasks of coordinators is to prepare 140 school leaders – directors, teachers, schools, centres to address the issues of intercultural education. Basis for the training is the Council of Europe *Intercultural competence for all. Preparation for life in a diverse world* publication and the *Framework for Intercultural Competence in the Polish System of Education*.

As there is always something to learn from the previous experiences and always something to do to make the life of the minor migrants better, while working on the development national strategy it might reasonable to take into account the OECD's recommendations on how education systems can help migrant pupils integrate into their new communities: to provide sustained language support, within regular classrooms as soon as it becomes feasible; to encourage teachers to participate in professional development; to build the capacity of all schools attended by migrant pupils; to avoid concentrating

migrant pupils in disadvantaged schools; to provide extra support and guidance to migrant parents and to demonstrate the value of cultural diversity (OECD, 2015, p. 16; Schleicher, 2016, p. 29–30).

Summary

Foreign nationals have an access to learning and care in all types of public kindergartens and schools until age 18 or completion of upper secondary school on the conditions applicable to the citizens of Poland. None of the regulations restrict the access of foreigners to private schools and educational institutions. There have been noticed a few gaps in the bounding law, both on the national and local level. As the situation of migrant minors has been monitoring regularly both by governmental agencies and non-governmental organizations which work for and with the children as well as by independent institutions for human rights protection, a few new legal solutions are pending.

Culture assistant is not able to solve all educational problems which teachers face every day at schools. Therefore, it is worth considering the possibility of making further changes, so that the process of education of pupils, both who come from abroad and the Polish ones, will take place at the highest possible level. Current challenges: recent researches findings do not mention about any kind of special assistance to be given neither for those pupils who have missed several years of education nor for illiterate teenage foreigners.

Despite the obstacles and gaps in providing access to high quality education for minor migrants within Polish system of education, many of the minors benefit from the education and make academic progress.

Framework for Intercultural Competence in the Polish System of Education was prepared which seems to be a significant step toward a national strategy on the migrant minors access to high quality education.

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Securing the best interests of the child in the Polish legislation on foreigners

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Abstract

The study attempted to find out whether the Polish legislation acts provide the best interests of the child, due to the international standard in Article. 3.1 The Convention on the Rights of the Child, was taken into consideration. After a period of transformation in Poland, there was a change in the national procedure for determining refugee status, including unaccompanied children. Amended several times Act on foreigners, and recently implemented EU rules to the Act on foreigners in 2013 and amending the act of granting foreigners with international protection.

Subject of research: Analysis of Polish legislation on foreigners

Purpose of research: The subject of this thesis concerns whether the polish legislation acts on foreigners has secured the best interest of the child.

Methods: analysis, synthesis

Keywords: children, the best interests of the child, protection of children's rights, polish legislation on foreigners.

Explanation of abbreviations:

EU – European Union

UstCudz – Act on foreigners

Convention (KPDz) – Convention on the Rights of the Child

Constitution – The Constitution of the Republic of Poland

Art. – Article

Ust. – Paragraph

Dz. U. – Journal of Laws

Committee – Committee on the Rights of the Child

General Commentary – General Comment of the Committee on the Rights of the Child

Supreme Court (SN) – Supreme Court of the Republic of Poland

Voivodship administrative court – Voivodship administrative court of the Republic of Poland

Introduction

The process of political transformation in Poland started after 1989. Has created a quality ground for the issue of foreigners and its legal regulation. As a result of changes, one of the major issues was the situation and role of the individual and individual interests (individual rights) in relation with the state and other public and legal unions. This marked the need for a new look at the position of a foreigner in Poland. In this new situation, in force since 1963 the normalization of administrative – legal status of a foreigner were no longer sufficient and adequate to the existing realities *(*There was eg. the need to consider ratification of the Convention by Poland in 1991 relating to the Status of Refugees done in Geneva, 28 July 1951 and the Protocol on the Status of Refugees, done at New York, 31 January 1967 *(Dz. U. of 1991. No. 119 , pos. 515 and 517)*. Hence, quite significant changes in the law made in the early 90s – *cf. text. Act, Dz. U. of 1992, No. 7 ,Dz. U. Nr 114, pos. 30, zm. Dz. U. of 1995 No. 23, pos. 120)*. It turned out the necessity to develop a new legal solutions, which are reflected in the Act on foreigners of 25 June 1997 *(Dz.U. No. 114, pos. 739)*. This act definitely stimulated the legislature to develop a law on foreigners into direction of adapting it to the current needs and requirements. One of the most important impulses became the "context of the EU," which means adjusting our regulations to the requirements and standards of Community law even in the pre-accession period. The so-called "Aspects of the EU", related to the preparation of Polish entry into the EU have led to changes in the law on foreigners taken in 2001 and 2002. Europeanization and, above all, the conditions in the form of EU regulations on foreigners formed the basis of further transformations Polish legislation on foreigners, introduced in 2003, 2005 and 2006, and the effect of which is the present state of normative regulation in this area included in the acts of 2013. The normative system of the current Polish law on foreigners consists of Polish Constitution, which marks the most fundamental assumptions as to the legal position of a foreigner in our country. Of fundamental importance is the art. 37, according to which anyone who is under the authority of the Republic of Poland, enjoy the freedoms and rights ensured by the Constitution, and the exceptions to this principle with respect to foreigners determined by law. The protection of children's rights has gained constitutional status. According to the art. 72 paragraph. 1 of the Constitution of Poland ensures protection of the rights of the child. Paragraph. 3 obliges public authorities and persons

responsible for the child to listen to and take into account the views of the child. In art. 47 The Constitution also guarantees the legal protection of family, motherhood and parenthood. It should be emphasized that protection is granted to everyone, regardless of their nationality, origin or legality of residence on Polish soil.

Focal point for the real dimension of the legal position of a foreigner in Poland lies in the specific statutory regulations relating to the areas of matters relevant to the foreigner. Although there are different normalizations of the foreigner situation, they depart from the status of citizen of Polish constitutional principle but retains its importance as compared to the general RP to treatment of foreigners in Poland based on respectfully the rule of law standards.

The legal situation of a child foreigner form legal acts that apply to the rules of entry and residence of foreigners on Polish territory. These are: the Act of 12 December 2013 on foreigners, the Act of 13 June 2003 amending the act of granting foreigners with international protection and the Act of July 14, 2006 on entering the territory of the Republic of Poland, residence and departure from this territory of nationals of Member States of the European Union and their family members *(Dz. U. of 2013, pos. 1650; Dz. U. of 2003 No. 126, pos. 1176; Dz. U. of 2006 No 144, pos.1043).* The last act applies to nationals of the Member States of the European Union, and other categories of foreigners, who are generally subject to EU freedom of movement. As a rule, children- foreigners are subject to the same procedures regarding entry into Polish territory, legalization of stay, as well as expulsion from the territory, which relate to the total number of foreigners. Children participate in procedures for granting refugee status. Children – foreigners remaining in these procedures therefore require special protection by the Polish state.

In Poland are currently in force the provisions the Act on foreigners of 12 December 2013 *(Dz.U. of 2013, pos. 1650)*, specifying the terms and conditions of entry of foreigners on the territory of Poland, their transit through, stay in and departure from it, the procedure and the competent authorities in these matters. The provisions of the previous Act of 2003. due to multiple revising become unreadable and casuistic, which in turn caused problems of interpretation in the application of the Act. Changes made by the current Act include modification of rules for the control illegal immigration. The Act makes implementation into the Polish legal system the provisions

of acts of the European Union. The Act regulates the residence of foreigners in Poland for humanitarian reasons (Art. 348-359). Under this Act were amended the separate legal acts concerning, inter alia, the Education System Act of 7 September 1991*(Dz.U. of 1991r. No. 95 pos. 425)*, The Family Benefits Act of 28 November 2003 *(Dz.U. of 2003 No. 228, pos. 2255).*

1. The best interest of the child

It should be taken into consideration the best interests of the child contained in Article. 3 paragraph 1 of the Convention, which gives the child the right to have the assessment and securing his best interests to become a primary consideration in all actions concerning him or decisions in both the public and private area. It should be noted that it expresses the basic values contained in the Convention and the Committee on the Rights of the Child recognizes Article 3, paragraph 1 as one of the four general principles of the Convention in the interpretation and implementation of the rights of the child next to the art. 2 obliges the State to respect and ensure the rights of the child provided in the Convention to each child within the jurisdiction of the State without discrimination for any reason. Art. 6 expresses the inherent right to life and ensure the best conditions for survival and development, and art. 12 to hear his views on the way due to all matters affecting the child and give these views proper weight.

Committee on the Rights of the Child released several General Comments on issues of interpretation of the provisions contained in the Convention, including the General Comment of the Committee of the Rights of the Child No. 5 (2003) on general measures of implementation of the Convention – Article. 12 and No. 12 (2009) on children's rights to express themselves – art. 2; General Comment No. 13 (2011) on children's right to protection from all forms of violence; General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration- art. 3, paragraph 1 (adopted at the 62 meetings of the Committee 14.01-01.02.2013r.).

Committee in General Comment No. 5 (2003) on general measures of implementation of the UN Convention on the Rights of the Child in the paragraph 6 states that it is expected that States Parties shall interpret the development as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development." Committee on the Rights of the Child in General Comment No. 14 (2013) concerning

the right of the child to protect his best interests as a matter of the parent is (art. 3, paragraph. 1) paragraph. 4 indicates "The concept of the child's best interests is Aimed at Ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child". As previously indicated, the assessment of the best interests of the child shall be made by an adult cannot have the overriding value in relation to the obligation to respect all children's rights under the Convention. The Committee recalls that in regard to the rights contained in the Convention does not apply to the order of importance, all taken from the view of "the best interests of the child" and that none of the rights cannot be infringed by the incorrect interpretation of the best interests of the child". However, in the art. 5, the full application of the concept of the best interests of the child requires the development of appropriate rights-based approach, involving all stakeholders, aimed at securing a holistic physical, psychological, moral and spiritual integrity of the child and promote the human dignity. In paragraph 12 The Committee stresses that "the main objective of this general comment is to improve the understanding and application of the right of children to ensure that the assessment and protection of the best interests of the child to become a primary consideration, or in some cases, it is of utmost importance to that indicated in paragraph 38. The overall objective of this commentary is to promote a real change in approach leading to full respect for children as people who have rights, which in a more detailed dimension refers to:

a) all the implementing measures created by governments;
b) decisions taken in individual cases by the judicial authorities, administrative or public institutions and their representative entities in relation to a child or group of children;
c) the decisions taken by civil society and private sector organizations, including for-profit organizations and not-for-profit, providing services for children or having an impact;
d) guidelines for the activities undertaken by those working with children and for children, including parents and guardians.

In paragraph. 6 The Committee emphasizes that the concept of the best interests of the child has a threefold nature:

a) Substantive law: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are

being Considered in order to reach a decision on the issue at stake, and the guarantee That this right will be Implemented whenever a decision is to be made concerning a child, a group of Identified or unidentified children or children in general. Article 3, paragraph 1, Creates an intrinsic obligation for States, is Directly applicable (self-executing) and can be invoked before a court.

b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

In the present general comment, the expression "the child's best interests" or "the best interests of the child" covers the three dimensions developed above.

The Committee in General Comment states in paragraph 43, that "the assessment of the best interests of the child must include respect for the child's right to express those views freely in all matters affecting the child, and these views must be taken with due weight. This is clearly stated in General Comment No. 12, which also emphasizes the inextricable link between the provisions of Article 3, paragraph 1, and the provisions of Article 12. Both articles are complementary: the first aim is to ensure that the best interests of the child, and the purpose of the second – delivery methodology hear the views of the child or children and their inclusion in all matters concerning them, including the assessment and determination of their best interests.

Article 3, paragraph. 1 cannot be properly used, if they are not met the requirements of Article 12. Similarly, Article 3, paragraph. 1, strengthen the functioning of Article 12, supporting the important role of children in all decisions affecting their lives included in the paragraph 70–74 General Commentary No. 12. Paragraph 46 indicates that "the best interests of the child" is the law, policies and procedures, based on an assessment of all components of the interests of the child or children in a particular situation. In assessing and determining the best interests of the child in order to decide what the specific measure should take the following steps:

a) first, in the actual context of a particular case must determine the relevant elements of the assessment of the best interests of the child, give them specific content and each of them assigned a weight in relation to other elements;
b) second, to this end should be implemented a procedure to ensure legal guarantees and the correct application of the law.

Committee identified the elements to be taken into consideration during assessing the best interests of the child such as: the child's views, identity, preserving the family and maintaining relationships difficult situation of the child, the child's right to health, education, to express their views, the facts, the perception of time, securing legal representation, proper legal argumentation, to assess the impact of the decision on the rights of the child protection mechanisms appeals and verification decision and the professional preparation of specialists dealing with child. At the same time highlighted in the paragraph 48, that the assessment of the best interests of the child is an act of an exceptional nature to be taken in each individual case, in the light of the particular circumstances under which the child, group of children or children in general were found. These circumstances relate to the individual characteristics of each child or children, such as m. In. age, sex, level of maturity, experience, due to minorities, physical disability, sensory or intellectual, and social and cultural context in which is located the child or children, for example, the presence or absence of parents, the question of whether the child lives with parents, the quality of the relationship between the child and their family or guardians, the environment in terms of security, available opportunities for the family, distant relatives or guardians.

The right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of rights and obligations is also guaranteed by art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ratified in 1993.

On the content of the right to a court consists of ensuring real access to justice, the establishment of a procedure that ensures respect for the rights of the participant and to obtain a a reasonable timeframe of the case.

Right to be heard is one of the most important aspects of the right to a court binds to the active participation of the parties to get the truth being the basis of the decision. It can be traced to the influence of right to be heard also in the international sources, ie. mainly in the art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 *(Dz.U. of 1993 No. 61, pos. 284)* and art. 14 of the International Covenant on Civil and Political Rights of 19 December 1966 *(Dz.U. of 1997 No. 38, pos.167.)*. In view of the international agreements as sources of national legal system and the possibility of their direct application of the regulation and understanding of the right to a hearing in international law it is important. Therefore art. 6 paragraph. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms emerges the concept of "the right to a fair hearing" is often understood as the right to a fair trial (Habscheid, 1997, p. 40.). In addition to the literal meaning of the word "hearing", ie. The trial, the etymology of the word also refers to the word to listen (Redelbach, 1999, p. 247.). It is therefore a moment of hearings the parties and participants in the proceedings in terms of the status quo and relevant circumstances. In the framework of international regulations also children should be guaranteed the opportunity to express themselves freely. The Convention on the Rights of the Child adopted on 20 November 1989 by the UN General Assembly *(Dz.U. of 1991 No. 120, pos. 526 i 527.)* already in the art. 3 of the Convention recognizes the child considered by internal law as having sufficient understanding, in relating his proceedings in front of a judicial authority should be granted, and may request to grant the right to receive all relevant information, the right to the question about opinion and to express their views, the right to be informed about the possible consequences of his statement and the possible consequences of any decision. Similarly, Article 12 paragraph.

1 includes the right to express those views freely in all matters affecting the child, the views of the due weight in accordance with the age and maturity of the child, and art. 12 paragraph 2 gives the child the right to express themselves, either directly or through a legal representative, in any judicial or administrative proceedings, which it applies in accordance with the procedural rules of the proceedings and, therefore, including the right to a hearing. The directive of the Convention has been included in the jurisprudence of the Supreme Court, which has accepted that guided by expediency, taking into consideration level of maturity of the minor nature of the case and the care, the competent court should hear the views of the minor, in view of its good *(vide: Postanowienie SN z 15 XII 1998 r., I CKN 1122/98, OSN 1999, Nr 6, poz. 119.)*. It should be stressed that the right to be heard, understood broadly as the right to active participation of the parties and participants in the ongoing proceedings, in order to guarantee respect for their rights is of such importance that it encompasses all judicial proceedings, as well as administrative proceedings, not only civil proceedings. Right of a participant to explain the state of affairs and the accompanying circumstances and unfettered action in the proceedings is very important for the regularity and legality of the issued decision or judgment. According to the ruling of the Voivodeship Administrative Court of 24 November 2010, The demonstration of the violation by a public authority principle of the active participation of the parties in the administrative proceedings by failing her about gathering evidence and opportunities to familiarize with it and the ability to submit evidence, made it impossible to take specifically indicated process activity, mostly in the sphere of evidence, and to show that the infringement had a significant impact on the case result gives grounds to assume that there has been a violation of Article. 10 KPA *(Wyrok WSA w Warszawie z 24 XI 2010, I SA/Wa 1233/10, LEX nr 863631)*. It is situated not only in the national regulations, but also within the European standards of administrative proceedings *(Zasada I Rezolucji nr R (77) 31 Komitetu Ministrów Rady Europy z 28 IX 1977 r.)*.

It is reasonable to say that children's rights are a special category of individual rights and the ontological status of child rights in general does not differ from the ontological status of individual rights *(*Lang, 2014, p. 201–202; and Mik, 1992, p. 18–19).

2. Securing the best interest of the child in the polish legislation on foreigners

The Polish legal system does not formulate the definition of "child's welfare", but in the Polish legal doctrine attempts have been numerous attempts to construct. And so it is believed that the child's welfare is the "set of values, both spiritual and material, which are necessary for the proper: physical and spiritual development of the child, both in terms of intellectual and moral, and to prepare it to work for the good of population.

Taking into consideration the interests of the child in terms of family law W. Stojanowska defines it as "a complex of intangible and material necessary for the proper physical and spiritual development of the child and to properly prepare it to work according to his abilities, these values are determined by many different factors, the structure of which depends on the substance used and the specific legal norm, the currently existing situation of the child, assuming the convergence of so-understood term interests of the child with the public interest (Stojanowska, 1999, p. 98).

The principle of the child's welfare is a specific constitutional clause general expressed somehow in the art. 72 paragraph. 1 sentence 1 of the Polish Constitution. Its reconstruction should be done by reference to the constitutional axiology and the overall design of the system. It is a guiding directive content of many regulations. Besides the Act on Ombudsman for Children is contained in numerous laws, such as the Family and Guardianship Code, the Act on civil status, the Civil Code, the Code of Civil Procedure and the Act on foreigners.

The order to protect the child's welfare is a fundamental, overriding principle of Polish family law system, as well as a reference to a variety of other legal acts, which contain provisions apply to children. The concept of "protection of the rights of the child" in provisions of the Constitution should be understood as an order to protect the interests of the minors, which in practice alone can it occur in a very limited extent. The principle of the child's welfare is also the value that determines the shape of other institutional arrangements. It is primarily exposed as a special in the regulations ratified by Poland, the United Nations Convention of 20 November 1989 on the Rights of the Child in art. 3 paragraph 1 stated that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the a primary consideration

is the best interests of the child". "The welfare of the child" in this context as a concept is at the core of all the provisions of the Rights of the Child, being the proverbial "spirit of the law". It is an instrument for the interpretation of both the standards contained in the Convention and the national law of the countries that signed it. It is also a directive for the creation of the law and its application and should be a criterion for assessing during making decisions regarding to the child.

Moving on to discuss the acts relating to foreigners – children, I would like to focus primarily on the procedures for granting refugee status.

Minors in the procedure for granting refugee status is a kind of modification of the proper procedure, which is carried out to adults and it expresses itself through the person of the applicant. Child in accordance with Art. 2 point k of the procedural directive (Dublin III) belongs to a category of applicants with special needs to adopt and means a person with special needs, who need of special guarantees in order to exercise the rights and fulfill the obligations referred to in this Directive. This procedure should be subject to additional guarantees and its primary purpose is to safeguard the best interests of the child.

The right to apply for a minor refugee status, guaranteed in Article 22 of the Convention on the Rights of the Child while the States-Parties are obliged to provide protection and humanitarian assistance, when such a child will be on the status of the claim. Unfortunately, the Polish legislator has not yet formulated the concept of "welfare of the child" but in the Polish doctrine had already tried to cope with this task.

Analyzing the acts it should be stated that the legislator took into account, although not in the full-range right of the child to protect his best interests, as a matter of the overriding, arising from the international standard contained in the Convention.

Essential legislative acts regulating the issue of foreigners, including children and unaccompanied minors are: Act of foreigners, the Act amending the act of granting foreigners with international protection and the Act on entering the territory of the Republic of Poland, residence and departure from this territory of nationals of Member States of the European Union and their family members. Analysis of the above acts leads to the conclusion that the legislature used the term "interests of the child" using not in the law on foreigners phrases: not in the art. 158 paragraph 2 point 3 – "important

interests of the child", not in the art. 167 point 1 in connection with art. 159 paragraph 1 "takes into account the interests of minor children" not in the art. 260 paragraph 1 the phrase "interests of the child". Moreover, not in the art. 187 point 7, Art. 332 point 1 and 348 point 3, are referred to the Convention on the Rights of the Child.

In the Act amending the act of granting foreigners with international protection there is the lack of appeal to the general principle of in the Convention "best interests of children as a matter of the overriding." Despite the fact that art. 3 in the Convention on an individual basis, but at the same time also requires that in all actions taken into consideration the best interests of children as a group. Art. 3 enhances the functionality of art. 12 facilitating essentially the role of children in all decisions affecting their lives.

In the Act on entering the territory of the Republic of Poland, residence and departure from this territory of nationals of Member States of the European Union and their family members reference was made to Convention and the concept of "welfare of the child" and "public interest".

Taking into account the provisions on the use of detention against foreigners-children *(http://interwencjaprawna.pl/wp-content/uploads/analiza-przepisow-detencja-dzieci.pdf;[access: 25.06.2015])* should be concluded that there is a worrying discrepancy regarding unaccompanied minors, because the Act on foreigners allows for placement in guarded centers unaccompanied minors who are under 15 years of age *(art. 397 ust. 3, Dz. U. of 2013 pos. 1650, Dz.U. of 2014 pos. 463, 1004).* It seems that such regulation, i.e. differentiation the legal situation of children in Poland without care, depending on the type of administrative procedure which takes place in their case (proceedings for granting refugee status or proceedings to oblige a foreigner to return) is contrary to the expressed in the art. 2 of the Convention on the Rights of the Child and in the art. 32 of the Polish Constitution – the obligation of equal treatment by public authorities. as invalid regulation should be assessed admission in the Polish legislation the possibility of detention of minors (regardless of age), who are under the care of their parents. Unfortunately, the legislature continues despite many instances of the Ministry of Internal Affairs and reports to both the Ombudsman for Children *(Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 27 czerwca 2012 r., sygn. ZSM/500/5/2012/AJ)* and the Ombudsman *(Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 4 kwietnia 2012 r., sygn. RPO-695531-V/12/MS;*

Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 12 grudnia 2012 r., sygn. RPO-695531-V/12/ŁK) has not taken to amend those provisions taking into consideration the best interests of the child.

Certainly deserves recognition the fact that, despite regulations allowing detention of minors according to the Article 397 paragraph 2 of Act on foreigners made a kind of exemplum, that the courts should be guided by the best interests of the minor when considering an application for inclusion in the guarded center of a minor foreigner, and in the having particular regard to: the degree of physical and mental development of a minor foreigner; personality characteristics; circumstances of the detention of a minor foreigner; and personal conditions in favor of putting minor foreigner in a guarded center.

Undoubtedly interesting fact is that the legislator refers to the minors in Act on foreigners – 67 times, which of course part refers to children seeking refugee status, while the Act amending the act of granting foreigners with international protection legislator mentioned 62 times about the minors. These numbers in some way emphasize that minors are an important part of the Polish legislation concerning international protection, including procedures for granting refugee status, although, of course, what matters most is the context and the sense in which they are placed.

The most sensitive and requires special procedure, good practice and professional approach is a group of unaccompanied minors, whose legal position is protected by international law. The Polish procedure for granting refugee status provided for separate regulations that result from the Geneva Convention, as well as the recommendations of the UN High Commissioner for Refugees on standards refugee procedures. The report of the Head of the Office for Foreigners clearly states that Poland in 2014 has realized in full the obligations under the Geneva Convention and the New York Protocol *(http://udsc.gov.pl/sprawozdanie-2014-z-wykonywania-ustawy-o-ochronie-cudzoziemcow-w-rp/ [dostęp: 25.06.2016])*. There is no doubt regards to minors, who are often undergoing the procedure, there is no equivalent statement that the Office for Foreigners would take responsibility for the implementation of commitments on behalf of the Polish Republic regarding the rights of the child enshrined in the Convention on the Rights of the Child. Unfortunately, as noted in the Polish literature Jacek Chlebny (Chlebny, 2011, p. 334-335) "protection of procedural rights of the unaccompanied minor

in the Polish legislation does not go as far as it provide recommendations in [...] Commentary Committee on the Rights of the Child".

According to the data included in the information of the Head of the Office for Foreigners of the implementation of Act amending the act of granting foreigners with international protection indicates that statements from individuals such as unaccompanied minors "is received in conditions suited to their needs and abilities of perception. Steps in the proceedings are carried out with the participation of a psychologist or a teacher (in the case of unaccompanied minors) or a psychologist or a doctor (in the case of victims of violence and people with disabilities), by qualified staff in this respect" *(http://udsc.gov.pl/sprawozdanie-2014-z-wykonywania-ustawy-o-ochronie-cudzoziemcow-w-rp/[access: 25.06.2016 r.).*

Summary

State operates through established authorities, institutions, mechanisms, procedures, organizations that represent the structure of the state. The total task of respect for, and observance of human rights and fundamental freedoms, including the foreigners on the first line is an administration employee In carrying out a responsible and difficult task in action constituting the image of administration and the perception of foreigners. During contact with the government bodies responsible for granting refugee status is expressed in the principle of the rule of law. Administration employee must pay attention to the fact that decisions concerning the rights and interests of the refugees, including unaccompanied child have a basis in law and that their content complies with the law. The actions should be impartial, fair and reasonable, protecting the right to be heard and to make statements in the course of all proceedings.

Has to be ensured the implementation of non-discrimination and prohibition of abuse of power. During the proceedings must be disclose objectivity. Any issued decision must be justified and contain the grounds on which it is based and indicate the possibility of appeal against the decision. The basis for regulation of the Code of Administrative Procedure and the special Acts on foreigners matters. For this purpose the authorities conducting the proceedings (the Office for Foreigners, the Council for Refugees) and the authorities participating in the proceedings (the commanders of departments of Border Service, Internal Security Agency) need to ensure protection of

the rights of foreigners, including unaccompanied children granted them permission may only be used for the purposes for which it was established and entrusted by the relevant provisions. To protect the rights of foreigners and refugees, including unaccompanied children a very important role to fulfill in the administrative, judicial and administrative has Office of United Nations High Commissioner for Refugees (UNHCR) on the rights of parties involved in the proceedings – the prosecutor, social organizations, the Commissioner for Human Rights and the Ombudsman for Children.

Various type of support, including legal assistance to refugees give non-governmental organizations conducting humanitarian programs. After a period of transformation in Poland, there was a change in the national procedure for determining refugee status, including unaccompanied children. Amended several times Act on foreigners, and recently implemented EU rules to the Act on foreigners in 2013 and Act amending the act of granting foreigners with international protection. However, still is not included in the full range of concepts contained in Article 3 of the Convention on the Rights of the Child, which mentions about the right of the Child to protect his best interests.

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(In)humanity at borders

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Abstract

Subject of research: International migration is complex transnational phenomenon. In the context of migration, States have both sovereign rights and responsibilities. The precarious humanitarian situation at European's borders is creating what seems to be an irresolvable tension between the interests of European states to seal off their borders and the respect for fundamental human rights. This paper focuses on issue of the admissibility of limitation of human rights in order to protect international borders.

Purpose of research: Aim of the paper is to show that international borders are not zones of exclusion or exception for human rights obligations. States are entitled to exercise jurisdiction at their international borders but they must do so in light of their human right obligations – full respect for human rights for each migrant, also to those who are in irregular situation.

Methods: study of literature and international jurisprudence, analyze of legislative materials and other documents

Keywords: human rights, border control, Frontex.

Introduction

There was a period of heated debates on the migration process in 2015. The discussions were hold not only in the scientific or political field but also in the media field. In September 2015 the whole world was shocked by the story of Osama Abdul Mohsen and his son. They fell down after being kicked by Petra Leszlo, a camera operator from the Hungarian TV station N1TV. The media eagerly published photos of border guards who turned their back on migrants asking for help. On the other hand the same media, just next to the shocking pictures showing human tragedy published, titles and watchwords that manifest enmity and hatred of migrants. Also a few headlines in Polish newspapers were: 'Refugee from Syria make demands!' or 'NO! For migrants'. The public debate has turned into a strife for better

arguments showing stronger words and more shocking pictures. It seems that the simple truth was forgotten – the central point of the discussion should be the human being values such as human dignity, life, security or freedom. The examples mentioned above have set up a few questions: Do migrants have any rights? Are states obligated to obey the rights? Are national borders zones where human rights are limited or forgotten?

1. Migrant or refugee?

The phenomenon of migration and refugee is currently one of the issues to be taken into account at the national and international level. Therefore defining a migrant and a refugee seems to be essential at this stage, especially now when it has become increasingly common to interchange the use of these terms. It may be highlighted that both terms have distinct and different meanings and, due to this, a different protection is granted by international law (Edwards, 2015). Detailed analysis of these terms is not the subject of this paper, however, it seems reasonable to analyse briefly the definitions.

For the purpose of this paper it was assumed that migration is defined as a crossing states border mobility. Any person that crosses the state border (with the exception of a person visiting for tourism, leisure and business) is considered a migrant. International Organization for Migration (IOM) strongly emphasises that to recognise someone a migrant is not dependent on one's legal status, causes and length of migration. Moreover, migration does not depend on the fact whether the movement is voluntary or compulsory (*Glossary on Migration,* 2011). It should be noted that there is no legal definition of migrant that is widely accepted by an international community, however, there is a common definition of a refugee.

Predominantly, a refugee is a migrant that, for certain reasons, has decided to leave a country of birth or residence. According to The Convention Relating to the Status of Refugee 1951 (Refugee Convention) and to The Protocol relating to the Status of Refugees 1967 (New York Protocol) a refugee is a person who, because of fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Lots of documents, addressed to the issue of refugees, have been adopted at forums of different international organizations of regional character, such

as African Union (AU), replacing the Organization of African Unity (OAU), and the Organization of American States (OAS). In 1969, OAU adopted the Convention Governing the Specific Aspects of Refugee Problems in Africa. In the latter document the definition of a refugee is broader than in the Convention Relating to the Status of Refugee 1951. According to Article 1 of the OAU Convention, the term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

A similar solution has been undertaken by the Organization of American States. In 1984, OAS adopted the Cartagena Declaration on Refugee. The definition is built upon the OAU but adds to it the threat of generalized violence, internal aggression and mass violations of human rights. Unlike the definition adopted in the refugee convention of the African Union, however, a refugee must show a link between herself or himself and the real risk of harm.

In Europe, for many years, there was neither any unitary refugee practice, nor regional binding standards that would complement or expand regulations from the Convention Relating to the Status of Refugee 1951. For this reason, the overall mechanisms of human rights protection have played an important role in protecting refugees' rights (Kowalski, 2005, p. 199). The most noteworthy is the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR). This document, despite the fact that it refers to refugees' rights on the general basis, has great importance for tackling issues.

Those definitions of a migrant and a refugee indicate the complexity of the terms. The issue of the protection afforded to the people is also very complex. Migrants' rights are largely defined by the status that will be given to them and by the reasons underlying migration (Grant, 2005). In discourse certain terminology is used to categorize people who migrate. Some examples might be: "unaccompanied or separated children", "migrants in irregular situations", "smuggled migrants" or "victims of human trafficking". It should be noted that contemporary mobility has very complex reality due to which it can be difficult to neatly separate people into distinct categories as people may simultaneously fit into several categories. Moreover, the category may change from one to another in the course of journey (*Recommended Principles and*

Guidelines on Human Rights at International Borders, 2014, p. 3). However, regardless of the type of migration and the legality of a person's whereabouts on a specific territory, States are obliged to follow the international law regulations.

2. Migrants' rights – Freedom of Movement

An analysis of international law allows to indicate numbers of documents both, general and of a special nature, which establish some minimal standards for protection of all human beings. The specific instruments providing the basis for migration laws, policies and practice have been elaborated in a few branches of international law:

1) international human rights law,
2) international labour law,
3) international refugee law,
4) international maritime law.

All the above mentioned branches of international law establish some rights and obligations addressed to migrants. International maritime law might be an example. Within this law (except from the UN Convention on the Law of the Sea 1982) there are many instruments adopted under the auspices of the International Maritime Organization (IMO). These include a number that are of particular relevance to the rights of migrants: the International Convention for the Safety of Life at Sea 1974 and the International Convention on Maritime Search and Rescue 1979. It is also worth mentioning, that there are a number of non-binding documents, such as the Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases 1997 (revised 2011) (*Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases,* 1997), Interim Measures for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea 1998 (revised 2001) (*Interim measures for combating unsafe practices associated with the trafficking or transport of immigrants by sea,* 2001), and Guidelines on the Treatment of Persons Rescued at Sea 2004 (*Guidelines on the Treatment of Persons Rescued at Sea,* 2004).

In this paper attention has been mainly focused on the international human rights law. The obligation to respect and to protect human rights is consistent in many points with migration. Although international regulations (within the international human rights law) do not refer *expressis verbiss* to

migrants, their rights are fully protected (*Recommended Principles…*, 2014, p. 3). The primary right that arises in the context of migration is a freedom of movement. Some authors present in their thesis that the right to choose a resident country constitutes other freedoms (Kędzia, 1991, p. 443). The freedom might be understood very widely (Zięba-Załucka, 2013, p. 35). According to article 13 of the Universal Declaration of Human Rights:

"1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country."

The International Covenant on Civil and Political Rights (ICCPR) 1966 in article 12 also refers to the freedom of movement. The latteris composed of two aspects: internal and external. The internal aspect refers to the freedom of movement within home country (art. 12.1). The external aspect refers to the freedom of movement between different countries (art. 12.2), and comprises right to leave one's own country and, on the other hand, right to enter one's own country. It should be mentioned that both internal and external aspects of the freedom of movement are connected with different groups of entities and different values. In addition to the freedom of movement, the United Nations Human Rights Committee adopted in 1999 CCPR General Comment No. 27, it was highlighted that this freedom is an indispensable condition for the free development of a person. Moreover, it interacts with several other rights enshrined in the Covenant.

Freedom of movement has been also included in a number of special international acts. As the examples:

- ⇨ The Convention on the Rights of the Child (UNCRC) 1989 (art. 10),
- ⇨ The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (art. 5, 8, 39),
- ⇨ The Convention on the Rights of Persons with Disabilities 2006 (art. 9, 18).

Also regional instruments of human rights have provided the freedom of movement: art. 12 of the African Charter on Human and Peoples' Rights or art. 2 of Protocol No. 4 to the Convention of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and the First Protocol. In Europe,

except of the European Convention of Human Rights, development of freedom of movement is important and it is highlighted in the Charter of Fundamental Rights of the European Union as well. According to article 45(2), freedom of movement is not limited to EU citizens, but it may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

3. Human rights = migrants' rights

As mentioned above, despite the fact that international human rights law does not refer directly to migrants, the latter fully enjoy all freedoms stated by human rights regulations. Such a conclusion can be based on the universality of human rights. Each and every human being, regardless of a legal status, has some natural rights which must be obeyed always (every time and everywhere). Protection of human rights of a migrant is a matter not only of law but also of morality (*Migration, human rights and governance,* 2015, p. 41). It is primary there to protect migrants' dignity in every situation, also (or particularly) in irregular situations. Limited framework of the paper does not allow to analyse deeply all rights and freedoms, as well as all regulations. Nevertheless, it is worth to mention some of them.

Migrants, as all human beings, fully enjoy all rights and freedoms guaranteed by ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR). Moreover, they are protected by Convention on the Rights of the Child, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as by The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). According to art. 2 of The United Nations Convention against Torture each State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Furthermore, no exceptional circumstances whatsoever, whether in a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. It is worth to mention also article the 1 of ICPPED, which establishes the absolute ban for enforced disappearance, and obligation to ensure that enforced disappearance constitutes an offence under criminal law (art. 4).

Together with general instruments of human rights law it is possible to indicate the international instruments that guarantee special protection for

some categories of migrants. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families may be a good example. The main purpose of this Convention is to set a special protection of migrant workers by adopting appropriate standards and regulating responsibilities of States (by sending and hosting migrants). The document sets right of all migrant workers, both legal or illegal.

Some special instruments have also been adopted on the forum of Council of Europe and the European Union. Migrants, staying on the territory of any state-party of ECHR, can fully enjoy rights and freedoms set by the Convention. Additionally, under some special circumstances, migrants may fall under the scope of the provisions of the European Social Charter. In Europe migrants can also enjoy their rights under following documents: the Convention on Action against Trafficking in Human Beings, the European Convention for the Prevention of Torture, and Inhuman or Degrading Treatment or Punishment, the European Convention on Extradition, the European Convention on the Suppression of Terrorism and the European Code of Social Security.

Limited framework of the paper does not allow to analyze deeply specific rights and freedoms guaranteed by conventions mentioned above. However, the principle of equality and prohibition of discrimination deserve special attention. It is commonly accepted that no one can be discriminated because of race, colour, gender, sexual orientation, language, religion, political opinion, national extraction or social. The prohibition of discrimination is guaranteed, among others, by Articles 2.1 and 26 of the ICCPR, Article 14 ECHR, Article 1 of Protocol No. 12 ECHR, Article E ESC, Article 7 ICRMW.

The prohibition of discrimination and other rights guaranteed by international human rights law are independent of the whereabouts of the migrant, they must be respected at all times and in every place, also at national borders.

4. National borders – limitation for human rights protection? FRONTEX

Establishing borders and fencing territories seems to be a natural and obvious process (Mikołajczyk, 2015, p. 168). It is entitled with the desire of States to guarantee themselves exclusive rights and control over a certain area (Jagielski, 1995, p. 14). National borders perform several functions. Firstly,

they define the State's territory. Secondly, national borders are connected with territorial sovereignty in both aspects: internal and external. They define the territory where there is a possibility of interference of external actors which can be limited or excluded. Moreover, national borders define territorial jurisdiction of states and range of activities undertaken by state's authorities (Balawajder , 2003, p. 44-45).

In the last few decades a number of new states has significantly increasedand as a result amount of national borders has significantly increased (Mikołajczyk, 2015, p. 168). For this reason, new challenges at a border management level have appeared. Especially when it comes to control peoples' mobility and protect rights of people on move. Most countries in their national laws and constitutions undertake the responsibility to respect and to protect fundamental rights. They do not restrict their recognition of human rights to citizens or nationals only. Therefore, it should be accepted that these rights are applicable to everyone within the territory of the state or subjected to its jurisdiction which means also to people crossing (or staying) at national borders (*Migration, human rights…,* 2015, p. 41).

International law recognises everyone's right to movement. One should remember that the freedom of movement is not equivalent to the right to enter any country. It is not the state's obligation to allow someone to enter its territory either. The state has an exclusive right to decide who (and when) can do it. Consequently, the State has another exclusive right to define grounds for expulsion of a foreigner from its territory. This has been repeatedly confirmed by the United Nations General Assembly. According to resolution 61/165 of 2006 States have "sovereign right to enact and implement migratory and border security measures"[1].

Regardless of national law, national borders are not zones where international human rights law is limited or excluded. The State and all of its institutions (including those responsible for the border control) are obliged to exercise their jurisdiction in the light of human rights obligations (Recommended Principles…, 2014, p. 3). States are requested to promote and protect human rights and fundamental freedoms of all migrants, regardless of their status. Moreover, States have the duty to comply with their obligations under international law in order to ensure full respect for human rights of migrants.

Without any doubts a complicated issue arises when border control procedures and respect for human rights are combined. In 2015 year a mass

influx of migrants to external European borders has showed the difficulty and complexity of the problem. The year 2015 was unprecedented for the European Union (EU) as more than 1,8 million illegal entries, associated with an estimated one million individuals, have been noted. It is said that the situation was unique since World War II (Risk Analysis for 2016, 2016, p. 5). Last year the European States have recorded six more times the number of migrants reported in 2014 which itself was an unprecedented year. In January 2015 over 20,000 illegal detections were noted, while in the 2009–2014 the average number for this month was 4,700 detections (Risk Analysis for 2016, 2016, p. 8). In a very short period of time, thousands of migrants (with different background, nationalities and purposes) have arrived to external borders of the European Union. This was a new reality and experience for many European States. The States had to (and still have to) face new challenges, such as: widening of surveillance areas, growing the need for and the extension of search and rescue operations and the lack of facilities to receive and accommodate thousands of persons over a short time. And finally, the lack of expertise to detect nontypical travel documents, and difficulties in addressing fraudulent declarations of nationality or age (Risk Analysis for 2016, 2016, p. 8). All these problems may cause different types of abuses and unacceptable situations. Therefore, one question is very important at this stage: do States and institution controlling external borders fulfil the obligations under human rights law?

Most of the States-Members of the European Union have adopted a system of borders control which instead of the self-management of external borders recognizes a coordinated cooperation of various entities (Mikołajczyk, 2015, p. 171). The main entity is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). The Agency was established by the Council Regulation No. 2007/2004 in 2004. The main purpose of the Agency is to manage the cooperation between national border guards and to secure its external borders. Frontex operations aim to detect and stop illegal migration, human trafficking and terrorists' infiltration (Peers, Guild and Tomkin, 2012, p. 120). Notwithstanding, the international society has repeatedly criticized the Agency for the lack of respect for fundamental human rights. The authors of the critics were not only international non-governmental organizations[2] but also other EU agencies and bodies of other international organizations[3].

Different questions were asked, mostly about the way that the European Union protects fundamental rights (including right to life, respect for human dignity, and non-refulgent rule) on its external borders. In 2011 the Human Rights Watch, in its report called Frontex "dirty hands of Europe" (*The UE's Dirty Hands*, 2011). In this way the organization has expressed disapproval for Frontex's activities regarding migrants on the coast of Greece in 2010-2011. Between November 2, 2010 and March 2, 2011 nearly 12,000 migrants entering Greece at its land border with Turkey were arrested and detained. The detention did not meet the minimum of human rights standards (*The UE's Dirty Hands*, 2011).

Public criticism has brought to adoption of the Regulation No. 1168/2011 of the European Parliament and of the Council amending Council Regulation (EC) No. 2007/2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. According to the Regulation Frontex is obliged to fulfil all regulations of international human rights law, including Geneva Convention Relating to the Status of Refugees 1951 and international principles such as necessity and proportionality.

The obligation to respect and to protect human rights in all Fronetx activities has been also included in the Frontex Code of Conduct for All Persons Participating In Frontex Activities and in the Frontex Code of Conduct for Joint Return Operation. First of the above mentioned Codes includes principles that can be brought to the following guidelines:

Know and respect law: international law, law of the European Union and national law.

1. Respect human dignity and fundamental rights of all human beings, regardless sex, race, language, religion, beliefs, age, disabilities or sexual orientation.
2. Inform migrants about their rights as well as instruments and procedures protecting their rights.
3. Respect ethical standards.
4. Fairness and impartiality in every undertaken action.
5. Inform proper bodies about any kind of abuses.

Furthermore, the cooperation between Frontex and The European Union Agency for Fundamental Rights is very important. Cooperation

arrangement between the European Agency for the management of operational cooperation at the external borders of the Member States of the European Union and the European Union Agency for Fundamental Rights was signed in 2010. Its main purpose is to strengthen the protection of fundamental rights in case of different actions undertaken at external borders of the European Union. The obligation to respect human rights was also highlighted in Work Programme for 2016 that was adopted on Frontex Consultative Forum on Fundamental Rights. One of the most important priorities for 2016 is to organize all Frontex actions with full respect for fundamental rights. What's more, the Agency is obligated to organise trainings on fundamental rights for its workers.

Legal regulations and proposals mentioned above are intended to ensure that all Frontex activities will be undertaken with full respect for fundamental rights of all human beings. However, recent events raised doubts about the effectiveness of these mechanisms. A few uncertainties appeared: are legal regulations followed in practice? or maybe legal regulations are only a trick that the European Union uses in order to reassure the public opinion? This and other doubts are caused, among all, by the agreement between the EU and Turkey that was signed in March 2016. European institution representatives ensured that the agreement would be accomplished with full respect for EU law and international law (*EU and Turkey agree European response to refugee crisis*, 2016). Time will show whether the EU fulfil its promises.

5. Conclusions

Migration is an integral part of the globalization process. Currently millions of people enjoy their freedom of movement. World leaders need to face an uneasy task – to ensure that migrations are carried with full respect for human rights. It must be guaranteed that fundamental rights are fully respected and protected at national borders. Despite all regulations, it is still a big issue that needs to be solved. Why is it still such a problem? There are few reasons. First of all, there is no reliable information and statistics about human rights violations at the borders. The lack of cooperation between different institutions controlling borders constitutes another difficulty. And finally, there are no clear regulations concerning the responsibility for potential violations.

As a conclusion there could be one general postulate – the primacy of human rights. This postulate contains three aspects:

1. The State should fulfil all its international obligations with good will and with full respect for human rights.
2. The State should ensure that human rights standards are a reference point during a border control.
3. The State should fulfil all its human rights obligations on the whole its territory, including borders.

National borders are not zones where human rights law are limited or excluded. Right to freedom of movement is not only a difficult problem to solve, but first of all, it is human right. A migrant, finally, is a human being whose dignity should be protected.

Summary

The year 2015 was unprecedented for European Union as more that 1,8 million illegal entries have been noted. In a very short period of time, thousands of migrants have arrived to external borders of the European Union. This new reality created tensions between the interests of European states to seal off their borders and the respect for human rights. States are entitled to exercise jurisdiction at their international borders but it must be done in the light of human rights obligations. States are requested to promote and protect human rights and fundamental freedoms of all migrants, regardless of their status. The obligations are addressed also to any bodies that control external borders, eg. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. National borders are not zones where human rights law is limited or excluded. Migrant is a human being whose dignity should be always protected.

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The problem of refugees and immigrants in the teaching of the Catholic Church

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Abstract

The problem of emigration and refugees is constantly present in the history of mankind. It is also present in the teaching of the Catholic Church. Both in history and in the present, the Church preached the Gospel message calling Christians to see Christ in every person, even in a stranger. The Church voice on emigration and refugees was heard both in the past and it is specially loudly heard now, in the present time when we experience the emigration crisis.

The subject of this study is to present the Catholic Church teaching on the issues of emigrants and refugees. The purpose is to show the care and concern of the Christians and the Catholic Church about the fate of refugees and immigrants. The analysis of the biblical texts and the documents contained in the teaching of the Catholic Church concerning immigrants and refugees will be the basic method used in this research.

Keywords: the Catholic Church's teaching, immigrants, refugees, Catholic social teaching.

Introduction

The problem of emigration and refugees is constantly present in the history of mankind. It is also present in the teaching of the Catholic Church. Both in history and in the present, the Church preached the Gospel message calling Christians to see Christ in every person, even in a stranger. The document of the Pontifical Council for the Pastoral Care of Migrants and Itinerant People and the Pontifical Council Cor Unum titled: WELCOMING CHRIST IN REFUGEES AND FORCIBLY DISPLACED PERSONS – Pastoral Guidelines says "In the meantime, the Church is guided in her commitment to refugees and other forcibly displaced persons essentially by the Sacred Scripture, the Tradition and the Magisterium, and for what concerns social matters, by the 'permanent principles' of her Social Doctrine that 'constitute the very heart of Catholic social teaching" (Pontifical Council for the Pastoral Care

of Migrants and Itinerant People and Pontifical Council Cor Unum, 2013, no 5). The Church voice on emigration and refugees was heard both in the past and it is specially loudly heard now, in the present time when we experience the emigration crisis.

The subject of this study is to present the Catholic Church teaching on the issues of emigrants and refugees. The purpose is to show the care and concern of the Christians and the Catholic Church about the fate of refugees and immigrants. The analysis of the biblical texts and the documents contained in the teaching of the Catholic Church concerning immigrants and refugees will be the basic method used in this research. In order to see the very big concern of Church for the emigrants and refugees, we must look to the Bible, to the conciliar documents, pontifical councils' documents and also to the teaching of popes.

It is important to notice that the Catholic Church does not only limit itself to teach about the necessity of taking care of migrants, refugees or other kind of newcomers. The Church also undertakes many different action which are aimed to help all those people who must leave their motherland and due to the different reasons, they must move to other countries or sometimes escape to other countries.

1. Concern for the newcomers in the Bible

It is not possible to talk about the Catholic Church teaching without references to the Bible. In the Gospel of John we can read: "*In the beginning was the Word, and the Word was with God, and the Word was God*" (John 1,1). The word of God contained in the Holy Scripture in the primary and the most important source of Church teaching. Therefore, it is necessary to look first to the texts of Bible because there are the bases of the Catholic Church teaching on the migrants and refugees. The entire teaching of Church, documents, messages, preaching or speeches of other kind are based on the Bible and they are kind of repetition and interpretation of the God's words contained in the books of Old and New Testaments.

The call to take care of foreigners is contained in the Old Testament. There we can find many indications on the treatment of foreigners. In many places of the Old Testament, the stranger is treated as a person in need of support, as well as widows and orphans. In many places of the Old Testament, it is repeated that the Israelites should care for the foreigners because they also were alien

when they lived in Egypt. It is worthy to notice that the foreigners, especially those who lived together with the Chosen Nation – "*resident alien*", are specially protected by the law given by God to the Israelites (see: Exodus, 20:10; Numbers, 9:14; Numbers, 15:14; Deuteronomy, 5:14; Deuteronomy, 28:43).

In the book of Leviticus which is the third book of the Greek Old Testament of Christian biblical canons, and the third of five books of the Pentateuch, it is written that: "*When an alien resides with you in your land, do not molest him. You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself; for you too were once aliens in the land of Egypt. I, the LORD, am your God*" (Leviticus, 19:33-34). In the above-quoted biblical text, there is the prohibition to be oppressive to foreigners and the warrant to treat this group of people as well as their own people. This passage directly calls the Israelites to love alien as yourself.

The indication of good treatment to foreigners may also be found in the book of Deuteronomy. This book is a part of the Pentateuch and it consists of three speeches delivered to the Israelites by Moses on the plains of Moab, shortly before they enter the Promised Land. There we can read: "*I charged your judges at that time, 'Listen to complaints among your kinsmen, and administer true justice to both parties even if one of them is an alien*" (Deuteronomy, 1:16). According to this text, the good treating should be shown by just treatment of alien in the court.

The prohibition or dishonesty of poor can be found in another text of the same book. Every Israelites should be honest in relation to people in needs and there should be no difference in treatment between own people and people. The Deuteronomy Book states: "*You shall not defraud a poor and needy hired servant, whether he be one of your own countrymen or one of the aliens who live in your communities*" (Deuteronomy, 24:14).

The next fragment of the book of Deuteronomy gives very specific orders on how to treat foreigners. There we can read: "*You shall not violate the rights of the alien or of the orphan, nor take the clothing of a widow as a pledge. For, remember, you were once slaves in Egypt, and the LORD, your God, ransomed you from there; that is why I command you to observe this rule. When you reap the harvest in your field and overlook a sheaf there, you shall not go back to get it; let it be for the alien, the orphan or the widow, that the LORD, your God, may bless you in all your undertakings. When you knock down the fruit of your olive trees, you shall not go over the branches a second time; let what remains be for*

the alien, the orphan and the widow. When you pick your grapes, you shall not go over the vineyard a second time; let what remains be for the alien, the orphan, and the widow. For remember that you were once slaves in Egypt; that is why I command you to observe this rule" (Deuteronomy, 24:17-22). The text begins with the general statement about the prohibition of violations of the rights of foreign and then there are detailed indications telling about the necessity to feed the people in need, among whom there are also foreigner or aliens.

In the book of Deuteronomy there is a part which is called by some of the biblical scholars as "Blessings and curses". One fragment of this part in this book says: "*Cursed be he who violates the rights of the alien, the orphan or the widow!' And all the people shall answer, Amen!*" (Deuteronomy, 27:19). The blessing and the curses are something natural for style legislation the Middle East. It can be assumed that the status of aliens together with other people in need was very strong and important in the society of Israel. To not violate the rights of foreigner was one of very important legal regulation and the observance of this law was necessary if Israelites wanted to life in harmony with God.

The very similar provisions may be found in the book of Exodus – the second book of Pentateuch which contains the Narrative History and Laws. This part of the Bible "is called Exodus from the Greek word for 'departure' because the central event narrated in it is the departure of the Israelites from Egypt" (Exodus, Introduction). The part of this book called "the moral law" states: "*You shall not molest or oppress an alien, for you were once aliens yourselves in the land of Egypt. You shall not wrong any widow or orphan. If ever you wrong them and they cry out to me, I will surely hear their cry. My wrath will flare up, and I will kill you with the sword; then your own wives will be widows, and your children orphans*" (Exodus, 22:20-23). Again, the biblical text takes care of foreigners and says that they should not be oppressed. Good, through His word contained in the Holy Scripture, reminds Israelites that they also were alien in Egypt and adds that He will hear the complains of those people and will punish all who do any harm to them.

The indication to treat alien in proper way is also contained in the book of prophet Jeremiah. In the Introduction to this book, in the New American Bible, we can read that this "combines history, biography, and prophecy. It portrays a nation in crisis and introduces the reader to an extraordinary leader upon whom the Lord placed the heavy burden of the prophetic office" (Jeremiah, Introduction). The prophet Jeremiah was sent to call the Israel to

improvement and conversion. One of this call says: "*if you no longer oppress the resident alien, the orphan, and the widow; if you no longer shed innocent blood in this place, or follow strange gods to your own harm, will I remain with you in this place, in the land which I gave your fathers long ago and forever*" (Jeremiah, 7:6–7). Fulfilling the prophet's call is necessary for Israel in order to stay in the promised land. Once again, the Bible indicates that the concern of strangers is one of the very important duties as a member of the Chosen Nation.

Some scholars are showing that there are some biblical texts which have opposite indication regarding the aliens or foreigners. They point out to the texts which do not talk about good treatment of this group of people (for example see: Deuteronomy, 13:6-9). In fact, there are such texts but they must be seen from the historical and religious prospective in which Israel was that time. It must be said, that those words were written when Israel lived among other nations which do not believe in true God. They had own deities and some of the Israelites worshiped those goods. Therefore, there are these kind of indications in order to ensure compliance with God's commandments and to prevent idolatry. However, these indications do not go in conflict with other indications which called the Israelites to special care and fair treatment of strangers.

The good treatment of strangers, foreigners and aliens is also written down in the books of New Testament. According to the indications of the New Testament, the Christians should see Christ in every person, also people such as aliens, foreigners or strangers. The call to help those people seems to be one of the most important duty of every believer in Christ. There is also a call to be merciful, because only such people shall obtain mercy.

First of all, the Christians should care for the foreigners because Jesus Christ was an alien and stranger too. Jesus was born in Bethlehem, although his family came from Nazareth. He was born not in his own land or town but far away from his fatherland. The Gospel written by Luke tells us: "*And Joseph too went up from Galilee from the town of Nazareth to Judea, to the city of David that is called Bethlehem, because he was of the house and family of David, to be enrolled with Mary, his betrothed, who was with child. While they were there, the time came for her to have her child, and she gave birth to her firstborn son. She wrapped him in swaddling clothes and laid him in a manger, because there was no room for them in the inn*" (Luke, 2:4015–7).

Also, shortly Jesus was born, due to the danger of death from king Herod, he had to escape to another country in order to save own life. Matthew in his Gospel stays: "*When they had departed, behold, the angel of the Lord appeared to Joseph in a dream and said, 'Rise, take the child and his mother, flee to Egypt, and stay there until I tell you. Herod is going to search for the child to destroy him*'" (Matthew, 2:13). This text shows that Jesus and his family were refugees.

In addition, Jesus during his public activities did not stay in his family house but he travels all the time. The text of the Luke says: "*He passed through towns and villages, teaching as he went and making his way to Jerusalem*" (Luke, 13:22). Similar reality is described by the Gospel of Matthew: "*Jesus went around to all the towns and villages, teaching in their synagogues, proclaiming the gospel of the kingdom, and curing every disease and illness*" (Matthew, 9:35). This situation is also pointed out by Jesus himself when he is saying that he has no own place: "Jesus answered him, 'Foxes have dens and birds of the sky have nests, but the Son of Man has nowhere to rest his head'" (Matthew, 8:20 and Luke, 8:20).

The Christians are called to care for aliens because Christ asks us to do so. This is the duty of every Jesus' disciples according to the words written in the Gospel of Matthew "*Blessed are the merciful, for they will be shown mercy*" (Matthew, 5:7). One of the works of mercy, which can be found in the catechism is "to harbor the harborless" which is presently interpreted as shelter the homeless (United States Conference of Catholic Bishops, The Corporal Works of Mercy).

The idea of being merciful is explained in detail in the chapter 25 of Gospel of Matthew. This text of Gospel is called "the Last Judgment". There we can read: "*When the Son of Man comes in his glory, and all the angels with him, he will sit upon his glorious throne, and all the nations will be assembled before him. And he will separate them one from another, as a shepherd separates the sheep from the goats. He will place the sheep on his right and the goats on his left. Then the king will say to those on his right, 'Come, you who are blessed by my Father. Inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me.' Then the righteous will answer him and say, 'Lord, when did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and welcome you, or naked*

and clothe you? When did we see you ill or in prison, and visit you?' And the king will say to them in reply, 'Amen, I say to you, whatever you did for one of these least brothers of mine, you did for me.' Then he will say to those on his left, 'Depart from me, you accursed, into the eternal fire prepared for the devil and his angels. For I was hungry and you gave me no food, I was thirsty and you gave me no drink, a stranger and you gave me no welcome, naked and you gave me no clothing, ill and in prison, and you did not care for me.' Then they will answer and say, 'Lord, when did we see you hungry or thirsty or a stranger or naked or ill or in prison, and not minister to your needs?' He will answer them, 'Amen, I say to you, what you did not do for one of these least ones, you did not do for me.' And these will go off to eternal punishment, but the righteous to eternal life" (Matthew, 25:31-46).

There are some special fragments that need to be pointed out in above – cited passage. Firstly, Jesus calls people "blessed" and offers them the place in his Kingdom because when he was a stranger they welcomed him (see: Matthew 25:34-35). When people are surprised and not sure when they have done such act (see: Matthew 25:38), Jesus reminds them that everything what they have done for people in needs they do for the King (see: Matthew, 25:40). In the next fragments of the above-mentioned text, Jesus states, that everyone who does not help and care for people in needs, among whom they are, also strangers, cannot be called Christ's disciples and will not be able to enter the eternal life (see: Matthew, 25:41-46). Once again there is a call to love God in other people, especially in people who are poor and who need the help. The migrants and refugees are the people in whom every Christian should see Christ.

In the New Testament, one more important issue can be seen. This issue is linked very strongly with the call to be merciful and with the necessity to see Christ in every person, also in strangers, migrants and refugees. The Apostol John in his first letter is saying: "*If anyone says, 'I love God', but hates his brother, he is a liar; for whoever does not love a brother whom he has seen cannot love God whom he has not seen. This is the commandment we have from him: whoever loves God must also love his brother*" (1 John, 4:20). This is very strong statement which show very clearly what being Christian is all about. It must be said that being Christian is about loving God but, this love is worth nothing if the person does not see and love God in other people.

The Bible, both the book of Old and New Testament, shows the very big concern regarding aliens and foreigners. The care for this group of people was

very strong in the Jewish tradition. The same is in the Christian tradition. The Holy Scriptures has very clear and precise indication about the treatment of strangers and it says that no one can call himself Christian or disciples of Jesus if he or she cannot see God in migrants and refugees.

2. Migrants, refugees and aliens in the Church teaching

The message of the Bible has been repeated in the teaching of the Catholic Church. It is obvious that all provisions and indications contained in different Church's documents are in close relation to those which could be found in the books of Old and New Testament. The Catholic Church teaching does not add anything new to the biblical message. It is the repetition, interpretation or explanation of biblical texts. It is also showing these biblical passages in the context of current times.

The care for strangers and aliens has been present in Church's teaching since the beginning. In one of the oldest Christian document outside the canonical New Testament – the First Letter of Clement to Corinthians, there are the indication about the hospitality. This letter was written by the pope and the bishop of Rome – Clement in about year 96. The author points out to Moses and says that God's blessing rested upon Moses thanks to his faith and also thanks to his hospitality. It is a call to the Christians from Corinth to care of those who are traveling to their area from other places (see: Clement, the First letter to the Corinthians). Also, in another early Christian text – the Constitutions of the Holy Apostles, from IV century, we can see the provisions about good treatment of foreigners. The text states: "*All the first-fruits of the winepress, the threshing-floor, the oxen, and the sheep, shalt thou give to the priests, that thy storehouses and garners and the products of thy land may be blessed, and thou mayst be strengthened with corn and wine and oil, and the herds of thy cattle and flocks of thy sheep may be increased. Thou shalt give the tenth of thy increase to the orphan, and to the widow, and to the poor, and to the stranger*" (Constitutions of the Holy Apostles, Book VII, no. 29). In this document we can read about the necessity to take care of the people in the need. This care should be manifested by providing the food and shelter. The document lists the group of people in need and there are widows, orphans and strangers.

The different documents, during the long history of Church, treated about the issue of emigrants, refugees, strangers or foreigners. A good example of

such writings are two documents published by the pope Pius XII. In 1949, the pope – Pius XII wrote the encyclical letter focusing on the war in Palestine – Redemptoris Nostri. The document was created in the very specific historical context and the pope leans over the fate of the Palestinian refugees and calls to help to all refugees who had to leave their homes because of the war. Pius XII says "*We make an earnest appeal to those responsible that justice may be rendered to all who have been driven far from their homes by the turmoil of war and whose most ardent desire now is to lead peaceful lives once more*" (Pius XII, 1949, no. 7).

The same pope, few years later, in 1952, published the Apostolic Constitution called Exsul Familia. This document is recognized as a magisterial magna carta on migration. The pope is showing the Holy Family – Marry, Jesus and Joseph as an archetypes of refugees and he discusses the challenges and principles of the spiritual care for migrants. We have to remember that this Constitution was written in the middle of twenty century in the time before the Second Vatican Council. The Catholic consciousness and Catholic approach to other confessions and religions were different from this what the Church now represents. Therefore, this care and concern of the Church and the pope is basically focus on the catholic migrants. The document talks about creating the parish for immigrants and about pastoral care done in the language spoken by immigrants. The pope not only shows history of spiritual care and pastoral help done by the Catholic Church in past time, especially in the context of the First and Second World Wars but also outlines norms for future action regarding (see: Pius XII, 1552).

The next important point in the Catholic Church teaching is the encyclical letter of pope John XXIII – Pacem in Terris. This document bases the concern about the immigrant and the refugees on the fact that those people, the same as anybody else, are the subject of human right. First of all, John XXIII states that every person has the right to proper condition of living and right to develop his or her live – "*Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services*" (John XXIII, 1963, no. 11). Then, the pope points out that a person has also the right to change the place of living – "*Again, every human being has the right to freedom of movement and of residence within the confines of his own State. When there are just reasons in favor of it, he must be permitted to emigrate to other countries and take up residence there. The fact that he is a*

citizen of a particular State does not deprive him of membership in the human family, nor of citizenship in that universal society, the common, world-wide fellowship of men" (John XXIII, 1963, no. 25). This document clearly states about the right to emigrate and underlines the fact, that these people should be received by the citizens of other countries.

In addition, the pope John XXIII, in his encyclical letter – Pacem in terris says that there is a lot of suffering connected with the fact that many people must leave their homeland. He says: "The deep feelings of paternal love for all mankind which God has implanted in Our heart makes it impossible for Us to view without bitter anguish of spirit the plight of those who for political reasons have been exiled from their own homelands. There are great numbers of such refugees at the present time, and many are the sufferings – the incredible sufferings – to which they are constantly exposed" (John XIII, 1963, no. 103). Pope also notices that in some countries there is a problem with the freedom (see: John XIII, 1963, no. 104). Therefore, the pope wants to remind to everybody, that the emigrants and refugees are persons and due to this very reason their rights need to be recognized. No one loses rights only because he or she had to leave their country – "For this reason, it is not irrelevant to draw the attention of the world to the fact that these refugees are persons and all their rights as persons must be recognized. Refugees cannot lose these rights simply because they are deprived of citizenship of their own States" (John XIII, 1963, no. 105). The next paragraph of this encyclical letter underlines that one of this right to choose the new country of leaving and the right to receive the asylum in this country – "And among man's personal rights we must include his right to enter a country in which he hopes to be able to provide more fittingly for himself and his dependents. It is therefore the duty of State officials to accept such immigrants and—so far as the good of their own community, rightly understood, permits—to further the aims of those who may wish to become members of a new society" (John XIII, 1963, no. 106). Additionally, the pope – John XXIII gives his approval to all who understand the problem of refugees and helping them and calls all to support those organizations and institutions which care for emigrants and refugees (see: John XIII, 1963, no. 107-108).

The documents of the Second Vatican Council are very important for the Catholic Church. Also there, we can see the concern for emigrants and refugees. The Pastoral Constitution on the Church in the Modern World

– Gaudium et spes, was one of the most important outcome of the Council. The document is an overview of the Catholic Church's teachings about humanity's relationship to society, especially in reference to economics, poverty, social justice, culture, science, technology and ecumenism. Also, there are some important indications about the emigrants and refugees.

First of all, the Council sees that the person, living in the modern world, encounters many problems and suffering "*Never has the human race enjoyed such an abundance of wealth, resources and economic power, and yet a huge proportion of the worlds citizens are still tormented by hunger and poverty, while countless numbers suffer from total illiteracy. Never before has man had so keen an understanding of freedom, yet at the same time new forms of social and psychological slavery make their appearance*" (The Second Vatican Council, 1965, no. 4). Therefore, the Council calls everybody to respect for human dignity. This respect must apply to all and everybody should care for every of his or her brothers and sister with no difference who they are. The above-mentioned Constitution states "*In our times a special obligation binds us to make ourselves the neighbor of every person without exception and of actively helping him when he comes across our path, whether he be an old person abandoned by all, a foreign laborer unjustly looked down upon, a refugee, a child born of an unlawful union and wrongly suffering for a sin he did not commit, or a hungry person who disturbs our conscience by recalling the voice of the Lord*" (The Second Vatican Council, 1965, no. 27). It that text we have direct and strong indication that we should care for people who left their country to work in different places and for those who had to escape their own country. In addition, there is a call to the international community to take all necessary effort to meet the needs of people in need among whom there are migrants and refugees (see: The Second Vatican Council, 1965, no. 84).

The special care for emigrants and refugees by the Catholic Church is expressed also in the fact of creation the special institution dedicated to this issue. In 1970, the pope Paul VI called to life the Pontifical Commission for the Pastoral Care of Migration and Tourism. In 1988, this institution was raised to the rank of the Pontifical Council for the Pastoral Care of Migrants and Itinerant People in1988. Also, in 1971, another Roman institution was created. The pope Paul VI established the Pontifical Council Cor Unum which aim was to stimulate the charity works, also those for emigrants and

refugees (Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, 2013, no. 17).

The issue of caring for emigrants and refugees is also preset in the teaching of three last popes – John Paul II, Benedict XVI and Francis. There are numerous examples of popes' documents, messages or speeches that directly or indirectly talk about the issue of the immigration and refugee. Due to some limits of this study, we will point out only some of these papal statements.

First of all, John Paul II talked many times about refugees. During one of his apostolic visits to Pakistan, Philippines, Guam, Japan and Anchorage in February 1981, he visited the refugee camp in Morong, Philippines where among other he said: "*The fact that the Church carries out extensive relief efforts on behalf of refugees, especially in recent years, should not be a source of surprise to anyone. Indeed this is an integral part of the Church's mission in the world. The Church is ever mindful that Jesus Christ himself was a refugee, that as a child he had to flee with his parents from his native land in order to escape persecution. In every age therefore the Church feels herself called to help refugees. And she will continue to do so, to the full extent that her limited means allow*" (John Paul II, 1981, no. 3). Those papal words can be recognized as very important indication about Church mission. They state that every Christian should see Christ in refugees care for this group of people.

In 2001, during his speech to the members of the Council of the International Catholic Migration Commission, he said: "*Today, therefore, I wish to invite you to an ever deeper awareness of your mission: to see Christ in every brother and sister in need, to proclaim and defend the dignity of every migrant, every displaced person and every refugee. In this way, assistance given will not be considered an alms from the goodness of our heart, but an act of justice due to them*" (John Paul II, 2001, no. 2). The pope underlines the issue of dignity of every emigrants and therefore the help to these people cannot be recognized as some alms but as the sign of justice.

The important statement of pope John Paul II may be found in his massage delivered on the occasion of the 90th World Day of Migrants and Refugees 2004. The message says: "*As regards immigrants and refugees, building conditions of peace means in practice being seriously committed to safeguarding first of all the right not to emigrate, that is, the right to live in peace and dignity in one's own country. By means of a farsighted local and national administration, more equitable trade and supportive international cooperation,*

it is possible for every country to guarantee its own population, in addition to freedom of expression and movement, the possibility to satisfy basic needs such as food, health care, work, housing and education; the frustration of these needs forces many into a position where their only option is to emigrate. Equally, the right to emigrate exists. This right, Bl. John XXIII recalls in the Encyclical Mater et Magistra, is based on the universal destination of the goods of this world (cf. nn. 30 and 33). It is obviously the task of Governments to regulate the migratory flows with full respect for the dignity of the persons and for their families' needs, mindful of the requirements of the host societies. In this regard, international Agreements already exist to protect would-be emigrants, as well as those who seek refuge or political asylum in another country. There is always room to improve these agreements" (John Paul II, 2003, no. 3). The pope underline here several important issues related to the refugees. He states that every person has the right to live in his own country and everything what is possible should be done in order to fulfill this right. But, he stresses that the right emigrate also exists and this problem should be regulated on the international level with the participation of governments and with paying respect to the rights and dignity of refugees and emigrants.

Next pope – Benedict XVI also many times undertook the problem of emigrants and refugees. Short after being elected, he made the reflection during Sunday's prayer Angelus in which he said: "*Tomorrow, 20 June, we will be celebrating World Refugee Day, promoted by the United Nations to keep attention focused on the problems of those who are forced to leave their Homeland. This year's theme: "The courage to be a refugee", lays the emphasis on the strength of spirit demanded of those who have to leave everything, sometimes even their family, to escape grave problems and dangers. The Christian Community feels close to all who are experiencing this painful condition; it endeavors to encourage them and in various ways shows them its interest and love, which is expressed in concrete gestures of solidarity so that everyone who is far from his own Country will feel the Church as a homeland where no one is a stranger* " (Benedict VI, 2005a). The Pope underlines the value refugees and calls on the Christian community to perform works of love and mercy in relation to refugees.

The issue of refugees is also present in the encyclical letter – Deus Caritas written by Benedict XVI. Pope says that taking care of people who are in need is one of the most important port of the Church mission together with

the ministry of sacrament and preaching the Gospel. Pope says "*As the years went by and the Church spread further afield, the exercise of charity became established as one of her essential activities, along with the administration of the sacraments and the proclamation of the word: love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her as the ministry of the sacraments and preaching of the Gospel*" (Benedict XVI, 2005b, no. 22). Many times in the Church teaching in general and in the statement of Benedict XVI there was said that refugees and emigrants belong to the group of people who are in the need. In the same document, the pope adds that in the Church, which is called the God's family, there should not be anybody who suffers the lack of necessary measures to live with the dignity – "The Church is God's family in the world. In this family no one ought to go without the necessities of life. Yet at the same time caritas- agape extends beyond the frontiers of the Church. The parable of the Good Samaritan remains as a standard which imposes universal love towards the needy whom we encounter 'by chance' (cf. Lk 10:31), whoever they may be" (Benedict XVI, 2005b, no. 25).

The teaching of the Catholic Church on caring for refugees and emigrants is continue by the current pope – Francis. This subject is very present in Francis document, messages, speeches and different kind of statements. The richness of the teaching of the Pope about the proper treatment of people who need assistance, including immigrants and refugees is so great that it would be possible to create a separate book on this subject. It is a response of the Pope and the Church on the ongoing refugee crisis. Almost every Francis' statement is a reference to the subject of refugees and the great concern of the Pope about their fate.

In order to give some idea about the pope's teaching on the refugees and emigrants issue we can use the Message of pope Francis for the World Day of Migrants and Refugees celebrated on 17th January 17, 2016. The theme chosen by pope Francis for this day was: *Emigrants and Refugees Challenge Us. The Response of the Gospel of Mercy*. Francis states that "*Migrants are our brothers and sisters in search of a better life, far away from poverty, hunger, exploitation and the unjust distribution of the planet's resources which are meant to be equitably shared by all. Don't we all want a better, more decent and prosperous life to share with our loved ones?*" (Francis, 2015a). It is important indication that says that those people who look for the better life and therefore they

decided to emigrate are our brothers and sisters. We all care for our brothers and sisters and we are willing to help them so if we understood that those people belong to our family, it will be no problem for us to care for them and to help them. The pope says that receiving the refugees is the same as receiving God – "*Biblical revelation urges us to welcome the stranger; it tells us that in so doing, we open our doors to God, and that in the faces of others we see the face of Christ himself*" (Francis, 2015a). The pope also gives some very specific indications "*Faced with these issues, how can the Church fail to be inspired by the example and words of Jesus Christ? The answer of the Gospel is mercy. (...) Each of us is responsible for his or her neighbor: we are our brothers' and sisters' keepers, wherever they live. Concern for fostering good relationships with others and the ability to overcome prejudice and fear are essential ingredients for promoting the culture of encounter, in which we are not only prepared to give, but also to receive from others. Hospitality, in fact, grows from both giving and receiving*" (Francis, 2015a).

Among many others statement of the pope Francis, there is also very significant message given by pope during the Sunday prayer Angelus on 6th June 2015. After the prayer, the pope Francis said: "*Faced with the tragedy of tens of thousands of refugees who flee death from war and hunger, and who have begun a journey moved by hope for survival, the Gospel calls us to be 'neighbours' of the smallest and the abandoned, and to give them concrete hope. It's not enough to say, 'Take heart. Be patient'.... Christian hope has a fighting spirit, with the tenacity of one who goes toward a sure goal. Therefore, as the Jubilee of Mercy approaches, I make an appeal to parishes, religious communities, monasteries and shrines throughout Europe, that they express the Gospel in a concrete way and host a refugee family. A concrete gesture in preparation for the Holy Year of Mercy. May every parish, every religious community, every monastery, every shrine of Europe welcome one family, beginning with my Diocese of Rome. I address my brother bishops of Europe, true pastors, that in their dioceses they endorse my appeal, remembering that Mercy is the second name of Love: 'What you have done for the least of my brothers, that you have done for me' (cf. Mt 25:46). In the coming days, the two parishes of the Vatican will also welcome two families of refugees*" (Francis, 2015b). This is very clear and strong call to the receiving the refugees. This is also very important in the situation when many European countries have doubts receiving refugees.

The pope Francis not only talk about refugees and about the necessity to give them help. Francis does not only teach Christians about caring for refugees but most of all this teaching is done through his actions. In April 2016, the pope went to visit the refugees on the Lesbos Island in Greece, where there is the huge refugee camp. Francis not only visited those people, not only bent over their fate and not only talked to them but he brought from Lesbos three families of refugees. The director of the Holy See Press Office, Fr. Federico Lombardi, S.J., has issued the following statement: "*The Pope has desired to make a gesture of welcome regarding refugees, accompanying on his plane to Rome three families of refugees from Syria, 12 people in all, including six children. These are all people who were already in camps in Lesbos before the agreement between the European Union and Turkey. The Pope's initiative was brought to fruition through negotiations carried out by the Secretariat of State with the competent Greek and Italian authorities. All the members of the three families are Muslims. Two families come from Damascus, and one from Deir Azzor, in the area occupied by Daesh. Their homes had been bombed. The Vatican will take responsibility for bringing in and maintaining the three families. The initial hospitality will be taken care of by the Sant'Egidio Community*" (Holy See Press Office, 2016).

The pope Francis as the head of the Catholic Church is very sensitive to the fate of refugees. There is much more of pope's words and acts showing his and Church concern for refugees. The limited form of this study does not let us to discuss all of them.

Presented above different documents and different statements of the Catholic Church teaching are only examples of what is Church thinking about immigrants and refugees. Of course there is much more. I would be worthy to see also same of the provision of the Catechism of the Catholic Church (see for example: Catechism of the Catholic Church, 1993, no. 360015–361) or the regulation written down in the canon law of the Catholic Church (see: The Code of Canon Law of the Catholic Church, 1983, no. 529 and 568). The care for refugees is also based on the principles of the social teaching of the Catholic Church. This topic is broadly described in the publication of the Pontifical Council for Justice and Peace of 2004 (see for example: Pontifical Council for Justice and Peace, 2004, no. 160). Finally, in this study, two Roman institutions were mentioned. They are the Pontifical Council for the Pastoral Care of Migrants and Itinerant People and the Pontifical Council Cor Unum.

Those councils published, among many others, two main documents which can be seen as kind of summary of catholic teaching about Christian approach to emigrants and refugees (see: Pontifical Council for the Pastoral Care of Migrants and Itinerant People, 2004 and Pontifical Council for the Pastoral Care of Migrants and Itinerant People, Pontifical Council Cor Unum, 2013).

3. Conclusion

The problem of immigration and refugees is so current and so actual in the modern world. Many people must struggle with the fact that they cannot live and develop in their own homeland. The reasons for such situation are very different. One of them is the war going on in some part of the world. Because of those, more and more people emigrate. This brings some difficult to the other countries – where those poor and experienced by suffering people arrive to. The problem of refugees is so serious that we are saying about the refugee crisis.

Many people and institution try to help and take care of immigrants and refugees. There are also some people and event entire countries with their elites and governments which are against refugees, they do not want to help them and also they do not want to receive refugees in their lands.

The Catholic Church has been one of the most important player in the area of dealing with the issue of emigration and refugees. The Catholic Church was calling to take of the emigrants and refugees in the past times as well as is very active in the current situation.

The Catholic Church teaching on this issue is based on the word of God contained in the Bible. Both, the Old and New Testaments have very clear message about caring for people who are aliens, foreigners, immigrants or refugees. The Israelites had very clear provisions regarding care for people who are in different needs also for strangers and aliens. The New Testament teaches us to see Christ in those people who need help. Jesus was also refugee and says that if we take care for aliens, this will be recognized as acts done for God. This means that if we are merciful we will receive the merci of God.

This biblical teaching is repeated in the teaching of the Catholic Church. The Church's documents and many papal statements and messages call Christian to take the word of God and live according to it. The Church teaching underlines that people have the right to live in their own country but also they have the right to emigrate. Also, the dignity of refugees

must be taken into the consideration. Finally, the Church teaching call all Christians and other people, institutions, organizations, governments and entire countries to take all necessary effort to help people who are emigrants or refugees.

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