

**Scientific Journal of
Georgian National University SEU**

VECTORS OF SOCIAL SCIENCES

**International Scientific Peer-reviewed
Journal**

N 5 2023

Tbilisi 2023

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ISSN 2667-9906

DOI: <https://doi.org/10.51895/VSS>

Udc 001.5 s 75

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MIGRATION AND PUBLIC INTERNATIONAL LAW

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Abstract

Starting from the perception that international migration is a process that leads from the State of origin through transit countries and perhaps even the high sea up to the entry to the State of destination this paper discusses the impact of public international law on the various stages of migration. Relevant are in this respect the rules of customary and treaty law, but also the provisions of the Global Compact for Safe, Orderly and Regular Migration of 2018 which try to create a comprehensive frame-work for the multidimensional phenomenon of international migration. These provisions do not have the legal status of hard, i.e. legally binding law, but still intent to govern the said process of migration. On the first stage the right to leave the country of origin is decisive. On the second stage the rules established for the protection of the migrants' safety are addressed and exemplified by the existing rules for the rescue of lives in danger on the sea. At the third stage the rules for entering the country of destination become crucial. Actually here the territorial sovereignty of the State is decisive, but sovereignty is not absolute but bound by relevant customary international law as the prohibition of non-refoulement or by treaty obligations entered by the State itself. In this context the EU asylum law and the policy of pushbacks is dealt with. Issues of integration and acquisition of nationality are likewise tackled. Finally the basic view of the Global Compact at migration as a necessity and cornerstone of sustainable development leading to overemphasizing the benefits of migration vis-à-vis the difficulties of many States, especially with irregular migration, is critically assessed.

Keywords: Global Compact for Migration – State sovereignty – right to leave and enter a country – smuggling of migrants – non-refoulement – pushbacks

Introduction

Some general remarks

International migration today is and probably ever was a global phenomenon which likewise raises hopes and concerns. While some are afraid of the consequences of migration, at least if a huge number of migrants seek to enter their country, others have a more positive assessment. This is also the view of the UN Global Compact for Safe, Orderly and Regular Migration of 2018 (Global Compact/GCM): *“Migration has been part of the human experience throughout history, and we recognize that it is a source of prosperity, innovation and sustainable development in our globalized world, and that these positive impacts can be optimized by improving migration governance.”* Only marginally it is mentioned that migration may affect countries *“in very different and sometimes unpredictable ways.”*¹ It is quite obvious that migration as far as it is not confined to the territory of a certain country may easily interfere with the interests of other States, and therefore rules of international law might be helpful to avoid conflicts.² For this purpose and since all States are more or less affected by migration and at the same time *“no State can address migration alone”*,³ the already mentioned Global Compact for Migration tries to establish a comprehensive regime for international migration for which all States should closely

¹ GCM no. 8, UN Doc. A/CONF.231/3 (30.7.2018); UN Doc. A/RES/73/195 (19.12.2018).

² This does not mean that internal migration is completely outside the reach of public international law as the human rights law demonstrates.

³ See GCM nos 7, 11 and 15.

cooperate. The Global Compact was adopted by an international conference in Marrakesh and later supported in December 2018 by a UN General Assembly Resolution by a majority of 152 votes. But the fact that 5 States voted against (Czech Republic, Hungary, Israel, Poland and the United States of America), 12 abstained and 24 States did not participate equally shows the potential of difficulties and open questions which are connected with this project.

The Global Compact for Migration is rooting in the 2030 Agenda for Sustainable Development⁴ and builds on the New York Declaration for Refugees and Migrants of 2016.⁵ Together with the Global Compact on Refugees of 2018⁶ it forms a broad basis for the statement of common principles, objectives and commitments.⁷ Although refugees in the sense of the Geneva Convention on Refugees of 1951 and its Protocol of 1967 are also migrants, facing similar challenges and vulnerabilities and enjoying the same protection of universal human rights, migrants and refugees belong to two different groups governed by separate frameworks.⁸ Only to refugees in the Convention's sense the specific rules of international refugee law apply. Therefore the Global Compact on Refugees (GCR) is mostly informed by the already existing legal norms of refugee law, while the Global Compact for Migration is a collection of vision, guiding principles, objectives and commitments not yet legally established, but may perhaps obtain at some time legal force.⁹ In the following the specific rules of refugee law will therefore not be further discussed. Another distinction should also be pointed out. The Global Compact for Migration relates according to its denomination to regular migration only, but to a certain extent irregular migrants are dealt with. Irregular migrants are people who are illegally staying in a country and obligated immediately to leave, and no legal reason exists that would impede their departure.¹⁰ But the status of irregular migrants does not get completely clear as far as the Compact is concerned. I shall come back to this issue in my concluding remarks.

Steering the process of migration

It is rational to see migration as a process from leaving a State, the State of origin, passing through transit States or the High Seas, up to the entry to the State of destination, where issues of the migrant's legal status, his or her integration up to a possible termination of the stay arise. I shall show in the following sections which rules of public international law can be applied to these different stages. As legal norms we have to take into account all the relevant rules of customary law, general principles of law and treaties.¹¹ However, we have also to draw upon the Global Compact for Migration though it is, by its own words, "*a non-legally binding, cooperative framework that builds on the commitments agreed upon by Member States in the New York Declaration for Refugees and Migrants.*" It is further stated that the Compact "*upholds the sovereignty of States and their obligations under international law.*"¹² Despite the non-legal character of the Compact it is expected that its "objectives and commitments" at least, as a frame-work, influence the ways and means how the process of migration is governed. An interesting question arises in this context. Why does the international community choose

⁴ UN Doc. A/RES/70/1 (2015); GCM Nos 6 and 18.

⁵ UN Doc. A/RES/ 71/1 (2016); GCM No. 3 GCM.

⁶ Affirmed by UN Doc. A/RES/73/151 (17 December 2018).

⁷ For a detailed negotiation history of the two Compacts see Micinski, N.R., "UN Global Compacts Governing Migrants and Refugees", Routledge New York, 2021, pp. 65 et seq.

⁸ See GCM nos 3 and 4.

⁹ Tomuschat, C., in *Verfassungsrecht, Völkerrecht, Menschenrechte – Vom Recht im Zentrum der Internationalen Beziehungen*. Festschrift für Ulrich Fastenrath, Groh, T. et al. (Editors), "Der UN-Migrationspakt", C.F. Müller Heidelberg, 2019, pp. 207-222 (209).

¹⁰ Krajewski, M., "Status als Instrument des Migrationsrechts", 76 "Veröffentlichungen der Deutschen Staatsrechtslehrer" (VVdStRL), De Gruyter Berlin 2017, pp. 123 - 167 (146).

¹¹ Cf. Art. 38 Statute of the International Court of Justice.

¹² GCM no. 8, UN Doc. A/CONF.231/3 (30.7.2018); UN Doc. A/RES/73/195 (19.12.2018); This does not mean that internal migration is completely outside the reach of public international law as the human rights law demonstrates; See GCM nos 7, 11 and 15; UN Doc. A/RES/70/1 (2015); GCM Nos 6 and 18; UN Doc. A/RES/ 71/1 (2016); GCM No. 3 GCM; Affirmed by UN Doc. A/RES/73/151 (17 December 2018); For a detailed negotiation history of the two Compacts see Micinski, N.R., "UN Global Compacts Governing Migrants and Refugees", Routledge New York, 2021, pp. 65 et seq; See GCM nos 3 and 4; Tomuschat, cf. footnote 9, p. 209; Krajewski, cf. footnote 10, p. 146; Cf. Art. 38 Statute of the International Court of Justice; GCM no. 7.

a non-legally binding instrument instead a binding treaty in order to regulate the process of international migration? Again I have to refer to my closing remarks.

1. Leaving the country of origin

Leaving a country is primarily a matter of national law, but just in this regard international law has left deep footprints. They indicate a strong support for rules that guarantee for anybody the right to leave any country, including his or her own. One may point here to the respective articles of the International Covenant on Civil and Political Rights (Art. 12, para. 2, ICCPR), of Protocol No. 4 to the European Convention on Human Rights and Fundamental Freedoms (Art. 2, para. 2, ECHR), of the American Convention on Human Rights (Art. 22, para. 2 ACHR) and the African Charter of Human and Peoples' Rights (Art. 12, para.2, AChHPR). It is provided, however, that the States have the possibility to subject the right to leave to restrictions determined by law, if they are necessary to protect national security, public order, public health or morals or the rights and freedoms of others.¹³ Of course one has to bear in mind that these treaties are obligating only those States which have ratified them and have not made admissible reservations to the relevant provisions. A customary law guaranty for leaving a State is probably not yet born. Thus, if a State is not bound by a relevant treaty provision there is at least no clear international legal support for leaving the country.

The Global Compact for Migration, too, does not contain an explicit provision concerning leaving. On the other hand the Compact in a more general way seems to favour such a right. This may be concluded from its No. 15 where one of the guiding principles is expressed as follows:

*"By implementing the Global Compact, we ensure effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle"*¹⁴

The stages include the starting point of migration from a certain territory. Furthermore, the States are asked to provide migrants with adequate documentation as proof of nationality and certificate of birth "at all stages of migration, as a means to empower migrants to effectively exercise their human rights".¹⁵ This involves the right to leave a country for the sake of migration. The same can be followed from the Compact's Fifth Objective according to which "availability and flexibility of pathways for regular migration" should be enhanced.¹⁶ But one has also to add that the States are called upon to cooperate in order to minimize adverse drivers and structural factors that compel people to leave by furthering resilience, disaster risk reduction and climate change mitigation, reduction of youth unemployment and avoidance of brain drain.¹⁷ As normal as migration is seen in general, nobody should be forced to leave the own country. This clearly corresponds with the right of everyone lawfully within a country to freely choose his or her residence on this territory.¹⁸

2. Migrants on the move to the State of destination

In many cases migrants will have to pass other countries before they have the chance to arrive at the State of their destination. As we have to discuss in more detail later, there is usually no right to enter a foreign country. But in cases of orderly migration people will just travel through and leave the transit country as soon as possible. According to international law, States because of their territorial sovereignty

¹³ See more generally Klein, E., in "Strengthening Human Rights Protections in Geneva, Israel, the West Bank and Beyond", David J. E. et al. (Editors), "On Limits and Restrictions of Human Rights", Cambridge University Press, 2021, pp. 10 – 39.

¹⁴ These words are underlined by the statement that the Compact is "people-centred" and has a "strong human dimension", GCM no. 15; also Kotzur, M., "Migrationsbewegungen als Herausforderungen an das Völkerrecht", 49 "Berichte der deutschen Gesellschaft für Internationales Recht", C.F. Müller Berlin, 2018, pp. 295 - 319 (303 et seq.).

¹⁵ GCM no. 20.

¹⁶ GCM no. 21.

¹⁷ GCM no. 18.

¹⁸ Cf. Art. 12, para.1 International Covenant on Civil and Political Rights (ICCPR).

have the power to admit or prohibit entry. In regular cases migrants have already received a transit visa or may get it upon arrival at the border.

On their way migrants may encounter many difficulties and dangers. Apart from the rules of the country concerned they are under the protection of the international human rights law as far as it is applicable. At any rate they can claim the rights having the character of peremptory norms of international law (*ius cogens*). Particularly endangered are so-called vulnerable people as elderly persons, women and children. One example is sexual and gender-based violence and trafficking in persons,¹⁹ another is the smuggling of migrants. In both cases the General Compact takes a clear position: The States commit to intensify their joint efforts to prevent and counter such practices by adopting the appropriate legislative or other measures.²⁰

The smuggling of migrants and the tragedies evolving there from are well-known. Thousands of people have lost their life while crossing the Aegean or Mediterranean Sea after having been brought by smugglers to inapt boats. The criminal nature of the smugglers is evident and generally acknowledged.²¹ Less known are the obligations of States faced with such situations. Public international law contains important relevant rules. So Article 98 (1) of the UN Convention on the Law of the Sea (1982) provides a clearly framed provision of a duty to render assistance. The provision reads:

“1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.”²²

One may also mention the International Convention for the Safety of Life at Sea (SOLAS, 1974) and International Convention on Maritime Search and Rescue (SAR, 1979) which both presuppose the need to save lives at sea and require States to be prepared for those events. The legal fundament for these Conventions is the human right to life that does not only avert interferences of States with the right, but also obliges them to take active protection measures against intrusions by third parties.²³ The right to respect life is guaranteed by all the universal and regional human rights conventions already mentioned (Art. 6 ICCPR; Art. 3 ECHR; Art. 4 AmCHR; Art. 4 AfCHPR). The Global Compact for Migration, in order to achieve its objective to save the lives of migrants mentions the commitment *“to cooperate internationally to save lives and prevent migrant death and injuries through individual or joint search and rescue operations (...)”²⁴*

In this context it might be interesting to have a short look at two decisions of the UN Human Rights Committee adopted in 2020. Both decisions concern the same facts. In October 2013 relatives of the author, Syrians like him, entered a fishing vessel anchored in a Libyan port. The vessel occupied with about 400 people including many children was shot a few hours after setting off by a boat flying a Berber flag, and the ship was going to sink. The emergency was announced to an emergency operator in Italy. After a while the operator explained that the vessel was in the Maltese search and rescue zone and transmitted the phone number of the Malta Rescue Centre. But only 5 to 6 hours later a Maltese boat and an Italian navy boat were on the spot, but the vessel had already capsized. Estimated more than 200 people died, among them the relatives of the author of the communication.

The first communication was addressed against Malta claiming that this State had violated the rights to life of the author’s relatives. The Committee made clear that it saw the responsibility with Malta, because

¹⁹ Yoon Jin Shin, “A Transnational Human Rights Approach to Human Trafficking”, Brill Nijhoff Leiden Boston, 2018.

²⁰ GCM nos 25 and 26. See further Sarkin, J. J. and Morais, T., “Why States Need to View Their Responsibility to Protect Refugee and Asylum-Seeking Women Through the Lens of Intersectionality, Vulnerability and the Matrix of Domination to Address Sexual and Gender-Based Violence”, “European Human Rights Law Review” 2022/6, pp. 534 – 570.

²¹ GCM no. 25 GCM; however, the smuggled migrants shall not be liable to criminal prosecution, having been only objects of smuggling. This is perhaps too a one-sided view.

²² Art. 98 (2) UNCLOS regulates obligations of coastal States regarding effective search and rescue service.

²³ Cf. “The Duty to Protect and to Ensure Human Rights”, Klein, E., (Editor), Berlin Verlag Arno Spitz “, 2000.

²⁴ GCM Objective 8, no. 24.

it had effective control over the rescue operation. However, the Committee found the communication inadmissible, because the applicant had not exhausted the possible domestic remedies.²⁵

The second communication was addressed against Italy. Here the Committee held that the State had violated the right to life (Art. 6, para. 1, ICCPR) and found that Italy has to make full reparation to individuals whose Covenant rights had been violated. Although the principal responsibility for the rescue operation lied with Malta (para.8.5), the Committee reasoned that Italy had failed to promptly respond to the emergency call by proceeding “with all possible speed to the rescue of persons in distress” according to Art. 98 UNCLOS and therefore failed to protect the life of many persons.²⁶

The European Court of Human Rights (ECtHR), too, has underlined the responsibility of States to prevent danger for the life and physical integrity of migrants. The essential facts of the famous case *Hirsi Jamaa and others v. Italy* are as follows: the applicants had left Libya on vessels on their way to Italy, but became intercepted by boats of the Italian Revenue Police and Coastguard 35 nautical miles south of Lampedusa and were subsequently transferred to military ships and returned to Tripoli. Although there was a bilateral agreement between Italy and Libya to this effect the Court by its judgment of 2012 unanimously held that Italy had violated Art. 3 ECHR by exposing the applicants to the risk of inhuman and degrading treatment in Libya and arbitrary repatriation to Eritrea and Somalia.²⁷ We shall come back to the problem of push-backs later. In the *Hirsi* judgment the Court also found a violation of Art. 4 Fourth Protocol to the European Convention prohibiting collective expulsion.²⁸ It seems that the Court in its following jurisprudence narrowed down this prohibition in special circumstances.²⁹ In the *Melilla case* some people succeeded to overcome the border fence between Spain and Morocco, but were immediately returned to Morocco by Spain. The Court held that this action did not amount to collective expulsion, because the applicants had themselves brought into this situation and had created a “disruptive situation” and endangered public safety while effective means of legal entry were available.³⁰ Still later judgments made clear that there is no plain “exception of unlawfulness” for the prohibition of collective expulsion.³¹ Rather the Court examines whether a disruptive situation was created and legal means of entry existed. If not, the Court finds a violation.³² But if legal points of entry are available, persons entering the territory irregularly and in big numbers may be immediately returned. The Court deduced this result also from the obligation of the State to register all asylum seekers at the border.³³

3. Arrival at and sojourn in the State of destination

3.1. Crossing border

Arrival at the State of destination presupposes the crossing of the border of this State. The basic truth is that there is no general right to enter a foreign country.³⁴ Such a right is only recognized with regard to the “own country”, particularly to the State of nationality.³⁵ Usually foreigners will apply in advance for

²⁵ Decision of the Human Rights Committee in Case Communication No. 3043/2017, A.S. et al. v. Malta, 13 March 2020, UN Doc. CCPR/C/128/D/3043/2017, paras 1.1. – 7; see also the five dissenting votes.

²⁶ Views of the Human Rights Committee in Case Communication No. 3042/2017, A.S. et al. v. Italy, 4 November 2020, UN Doc. CCPR/C/130/D/3042/2017, paras 1.1. – 11; see also the nine individual opinions.

²⁷ Judgment of the European Court of Human Rights (ECtHR) in Case No. 27765/09 *Hirsi Jamaa and others v. Italy*, 23 February 2012 (rectified 16 November 2016), paras 85 et seq.

²⁸ *Ibid.*, paras 159 et seq.

²⁹ See to this Diana Schmalz, “The Disparate State of Refugee Protection in the European Union”, 82 “Heidelberg Journal of International Law” 2022, p. 529 – 539 (533 et seq.).

³⁰ Judgment of the ECtHR in Case Appl. Nos 8675/15 and 8697/15 N.D. and N.T. v. Spain, 13 February 2020, para. 213.

³¹ Schmalz, cf. footnote 29, p. 535.

³² Judgment of the ECtHR in Case Appl. No. 12625/17, *Shahzad v. Hungary*, 8 July 2021, para. 61.; Judgment of the ECtHR in Case Appl. Nos 15670/18 and 43115/18, *M.H. et al. v. Croatia*, 18 November 2021, paras 293 – 304.

³³ Schmalz, cf. footnote 29, p. 535-6. One should bear in mind that the EU law may have stricter rules.

³⁴ Some authors try to follow from the right to emigrate the right to immigrate; this is the vision of a World State; cf. Breitenmoser, S., “Migrationssteuerung im Mehrebenensystem”, 76 *VVDStRL* 2017, pp 9 - 48 (19-20).

³⁵ E.g., Art. 12, para. 4 ICCPR; Art. 3, para. 2 ECHR; see also Klein, E., in “Grenzüberschreitendes Recht – Crossing Frontiers. Festschrift für Kay Hailbronner“, Jochum, G. et al. (Editors), “Zum Recht der Einreise in das ‘eigene Land‘“, C.F. Müller Heidelberg, 2013, pp. 313 – 326.

a visa, the permit to cross the border and stay in the country for a predetermined time. As the permission of entry is basically a political decision founded on its territorial sovereignty, the State may unilaterally or on the basis of bilateral or multilateral treaties allow border crossing by making visa available at the border itself or even by renouncing a visa requirement. E.g., no entry permits are necessary for nationals of Georgia and Ukraine wishing to travel to Germany, and according to EU law particularly not for the nationals of other EU Member States as an essential element of the establishment of an area of freedom, security and justice without internal frontiers and of the internal market.³⁶

Where a right to territorial asylum exists the applicant has a right to enter the State. One has to see, however, that there is no guarantee of such a right in general public international law, but States may commit themselves by their own law or by international agreements to open their doors for asylum seekers. If States do so, they usually qualify this right by conditioning its application. E.g., Art. 16a of the German Basic Law grants asylum only for persons persecuted on political but not economic grounds and excludes its invocation if the applicants enter the country from an EU Member State or another third State where the application of the Geneva Convention Relating to the Status of Refugees and the European Convention on Human Rights is assured. However, it is necessary to state that neither the Geneva Refugee Convention nor the European Human Rights Convention grant a right to asylum. What they actually do is that they prevent a refugee who has entered the country to be expelled or returned *“to frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”* (Art. 33).³⁷ We call this the principle of non-refoulement. The European Court of Human Rights, too, has interpreted Art. 3 of the European Convention in the same sense. This means that the non-refoulement principle is applicable not only for the sake of refugees in the meaning of the Geneva Convention but of all persons under the shelter of the European Convention. One may reasonably argue that this principle has attained the status of a peremptory norm of public international law.

To draw here a detailed picture of the asylum system of the EU is impossible. Very broad painting strokes have to suffice. Art. 18 of the EU Charter of Fundamental Rights guarantees the right to asylum only according to the Geneva Refugee Convention and to both of the EU Treaties. The law created on this basis is rather sophisticated and has become additionally enriched by the jurisprudence of the European Court of Justice in Luxemburg. On this basis three different groups of persons can be distinguished who enjoy international protection. First, refugees in the sense of the Geneva Convention; second, persons not being refugees but if returned to their home State, have to be afraid of execution, torture, inhuman treatment or danger of life, especially because of an ongoing armed conflict in the country; they are enjoying so-called “subsidiary protection”. Third, there are people who can claim “temporary protection”. This status has been established for the special case of a mass influx of persons who, because of a military conflict or massive human rights violations, have to leave their country.³⁸ All persons belonging to these categories have the right to stay for a basically limited time, but the time limits are different. The EU directive on mass influx of 2001 allows a stay to a maximum of three years.³⁹ It was activated by the Council for the first time in favour of the Ukraine refugees merely two weeks after Russia’s war against their country had started.⁴⁰ Yet it was not applied in 2015-16 when 722.000 people tried and finally succeeded to come to Germany over the West Balkan route asking for asylum and the planned distribution of these persons among all EU Member States did not work. Likewise States refused to admit people arriving by boat at the outer borders of the EU like Greece, Italy, Malta and Spain, a problem that could not be solved until today. So far the existing system of the EU has failed.

³⁶ Art. 3, paras 2 and 3 Treaty on European Union (TEU); Art. 21 Treaty on the Functioning of the European Union (TFEU); Art. 45 Charter of Fundamental Rights of the European Union (EU-CFR).

³⁷ See also Art. 12, para.3 African Charter on Human and Peoples’ Rights which only refers to other international agreements and the national law of the country concerned. The provision does therefore not create a self-standing right of asylum.

³⁸ Jean-Francois Durieux and Agnès Hurwitz, “How Many Is Too Many? African and European Legal Responses to Mass Influxes of Refugees”, 47 “German Yearbook of International Law”, 2004, pp. 105 – 159; Walter Kälin, “Temporary Protection in the EC: Refugee Law, Human Rights and the Temptations of Pragmatism”, 44 “German Yearbook of International Law”, 2001, pp. 202 – 236.

³⁹ Directive 2001/55/EC of the Council (20 July 2001), O. J. No. L 2001 (7 August 2001), p. 12. It is interesting to note that there is no legal definition of mass influx, neither in general public international law nor in European law.

⁴⁰ Decision 2022/382 of the Council (4 March 2022), O. J. No. L 71 (4 March 2022), p. 1. See Gakis, S., “L’activation de la directive ‘Protection temporaire’: l’apport d’un instrument sui generis à la protection des personnes déplacées”, 33 “Revue Trimestrielle des Droits de l’Homme”, 2022, pp. 771 – 794.

Neither the just mentioned EU frontier countries have performed their legal duties nor have the other members shown the necessary solidarity to support them.

Two other points should also be mentioned. States often establish maximum numbers for immigration. There is no general international rule to prohibit such laws, but those acts must not contradict other international legal obligations like treaty commitments or the prohibition of refoulement. The other issue is likewise intricate: the problem of push-backs. We have already dealt with push-backs at sea. But is a State allowed to preventing people asking for asylum or other form of (subsidiary or temporary) protection from entering the country or do they have the right to enter in order to apply and stay there until the application has been duly examined?⁴¹ Personal application in the country itself is not compulsory rather can be done at any place. However, in many cases there will be no opportunity to do so, e.g., when people have suddenly to leave their homes to escape persecution. Offices taking applications could be established just outside the border on the territory of the neighbouring State, if that State agrees to this mechanism. If not, at least according to European law, persons seeking for protection have a right to apply at the border and to stay until their application has been settled. Meanwhile the State of entry has to care for the people, register them, decide in due time on their entitlement to stay or their duty to leave, and implement the decisions. Still, many States have proved not to be able or willing to do so: because of the multitude of protection seekers, the lack of accommodation or, more generally, the lack of good will, etc. But the truth is that too often the States mostly concerned have been left alone with their problems with the result that terrible living conditions in the camps of the incoming people were created. Too often the other EU Members are washing their hands in innocence, merely asking the State concerned to do its job. By the way, the problem does not arise in view of people from Ukraine because they may at any time cross the border of EU States (no visa requirement) for a 90 days stay. Thus there is no need to control at the entry whether the reasons for protection exist or not. Actually, here these reasons evidently exist. But still more: In the Ukraine case even the distribution works quite well – at least up today, because the States on a voluntary basis acknowledge the free choice of residence by the refugees as an act of solidarity.⁴²

Generally it might be useful to discuss whether at a certain point the lack of solidarity of the other EU States⁴³ could entitle the State concerned to close its border and push back all people willing to enter or whether, even more, it could do so if the mass influx is organized in order to endanger the stability of a country. One may think of the sudden opening of the border with Greece by Turkey at the Evros River or the attempt of Belarus, shortly before the Russian aggression against Ukraine started (December 2021), to bring a great number of refugees to the Polish border. Both, Greece and Poland, tried to keep the people away or push them back to Belarus or Turkey.⁴⁴ Poland, in order to impede any entry to its territory secured its border with Belarus by a fence. In both cases the two EU members have been charged with violations of EU law because they had prevented people to cross the border and to present their application for asylum. In most domestic legal orders rules for national emergencies exist, and in fact Poland has declared such a state of emergency.⁴⁵ Similarly, Art. 78, para. 3, TFEU empowers the Council upon the initiative of the Commission and after consultation with the European Parliament to adopt provisional measures for the benefit of an EU Member State being confronted with an emergency situation by a sudden inflow of nationals of third countries. Such measures were not taken, and the unilateral measures issued and executed by Poland were (most probably) contrary to EU law.⁴⁶ However, the blame by the EU and its members was mild, because all of them probably found that Poland politically did the right thing saving the other countries from serious troubles. If States are not able to help another State this State must have the right to protect itself. The complicated EU rules have not always proved to be ready for practice.⁴⁷

⁴¹ No. 27 GCM asks the States for managing the borders in an integrated, secure and coordinated manner; No. 28 GCM asks for certainty and predictability in migration procedures for appropriate individual assessment.

⁴² Directive 2001/55/EC, cf. footnote 39, recital 20; see Schmalz, cf. footnote 29, pp. 536 et seq.; Gakis, cf. footnote 40, p. 788.

⁴³ Cf. Art. 80 TFEU.

⁴⁴ See Schmalz, cf. footnote 29, p. 530.

⁴⁵ The state of emergency was lifted in June 2022.

⁴⁶ In this direction points ECJ (First Chamber), Judgment Case C – 72/22 PPU, 30 June 2022. A proposal to strengthen the idea of solidarity was made and is still discussed among the member States, but it would not change the basic problem that the State of first entry is charged to decide on the asylum application and remains responsible for the persons concerned as long as another State is willing to accept them; see Schmalz, cf. footnote 29, p. 532.

⁴⁷ Thym, D., “Zurückweisung erlaubt“, Frankfurter Allgemeine Zeitung (FAZ), April 8, 2021, p. 6.

3.2. The status of migrants after arrival

The personal status of migrants arrived at the State of destination can only very roughly be discussed. It depends largely on the conditions of their entry, whether they are regular or irregular migrants,⁴⁸ whether they have already received a work permit etc. Persons protected under the EU Mass Influx Directive (e.g., Ukrainian refugees) can stay up to three years, they have access to social aid, medical care, family bringing together, access to education and labour.⁴⁹ At any rate all of them are under the protection of the applicable human rights. On the other hand they have to abide by the laws of the State, in particular to exercise their rights only in a peaceful manner, just like any national, too.⁵⁰ The Global Compact itself is rather generous, not really making differences between the categories of migrants. This is particularly expressed by its objective 16, namely to “empower migrants and societies to realize full inclusion and social cohesion”, meaning i.a. the implementation of “best practices on integration policies”.⁵¹ It is not very clear what this quite summary statement could mean and how far integration in a community reasonably should go for irregular migrants who have to leave the country. At any rate integration is a bilateral process, primarily dependent on the preparedness of the migrant to become part of the society where he or she is now living. The attitude of migrants is very different in this regard. Of course, the same is true with the States’ societies.⁵² Without their support integration cannot work. It is therefore prudent not to strain too much the readiness of the population for help.

The acquisition of the nationality of the State of destination is by no means a necessary part of integration. According to public international law States have the competence to regulate their nationality, but they have to respect some limits to the grant and withdrawal of nationality.⁵³ The first generation of migrants can acquire nationality only by naturalization on application. The second generation may already profit from the opportunity to receive the nationality by birth if the State has accepted the *jus soli* rule. Naturalization carrying with it the full status of a citizen should be at the end of an integration process, if the migrant has made clear the intention to stay and is prepared to work for the common good.⁵⁴ This is not to be equated with assimilation which always should be a free choice decision and never reached under pressure. Many States have decided to bestow their nationality on foreigners rather liberally.⁵⁵ International law is not objecting to this attitude, but is likewise not demanding a *jus soli* rule or a special time-limit for naturalization if only statelessness for children can be avoided.⁵⁶ It is sometimes maintained that the self-characterization to be an immigration country would include a generous assignment of nationality to immigrants. There is some truth in it, but one should not forget that genuine immigration countries as Australia, Canada and the USA very carefully select people who may be useful for the country and do not strain the public (social) budget. Nationality is too a precious good to be thoughtlessly distributed. One may well argue that in pluralistic societies the nationals have not to reflect a closed or uniform people, but the people as the sovereign, which it is at least in true democracies, must be held together by a common tie or bond that consists of a general “yes” to the country, a feeling of a specific belonging together. By the same token, the consequences of dual or more nationalities should be considered.⁵⁷ In most cases they do not present too difficult problems, but one should not forget that nationalities have an ordering function for the international relations by drawing limits between States, giving the chance to grant and to receive specific protection by the State of nationality.

⁴⁸ But cf. Judgment of the European Court of Justice in Case C-72/22PPU, preliminary ruling from Lithuania, 30 June 2022, paras 63 ff., 70 ff., 79 ff. illegal persons in Lithuania coming from Belarus asking for international protection must get the opportunity to apply; remarks concerning illegal detention.

⁴⁹ Gakis, cf. footnote 40, p. 772; Schmidt, A., “Die vergessene Richtlinie 2001/55/EC für den Fall des Massenzustroms von Vertriebenen als Lösung der aktuellen Flüchtlingskrise“, 35 Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR), 2015, pp. 205 - 212 (208).

⁵⁰ To this also GCM No. 32: “observance of national laws and respect for customs of the country of destination”.

⁵¹ GCM No. 32.

⁵² GCM No. 32. The attitude against discrimination, racism, xenophobia and intolerance against migrants is clearly expressed.

⁵³ Cf. Advisory Opinion of the Permanent Court of International Justice in Case Nationality Decrees in Tunis and Morocco, 7 February 1923, PCIJ, Series B, No. 4 (1923).

⁵⁴ By naturalization the status of denizenship is left; see Thym, D., “Migrationsfolgenrecht”, 76 VVDStRL, 2017, pp.169 – 216 (186 et seq.).

⁵⁵ Bubrowski, H., “Migration aus einem Guss?“, Frankfurter Allgemeine Zeitung, December 1, 2022, p. 2.

⁵⁶ See Art. 24, para. 3 ICCPR.

⁵⁷ Hailbronner, K. and Weber, F., “Das gemeinsame Band“, Frankfurter Allgemeine Zeitung, December 15, 2022, p. 6.

3. Terminating the stay in the country

Generally speaking, every person is entitled to leave the country, whenever he or she wishes to go, completely independent of the fact whether the person has acquired the nationality of this State or not.⁵⁸

On the other hand, based on its territorial sovereignty, the State has the power to expel non-nationals from its territory “in pursuance of a decision reached in accordance with law”, but not its own nationals.⁵⁹ This competence is, however, limited by the prohibition of refoulement and collective expulsion of aliens, particularly important to impede expulsion for discriminatory reasons.⁶⁰ In rather many cases expulsion cannot be executed for factual grounds, especially because the person is stateless, the home-state is not known (“sans papiers”) or because it refuses, though illegally, to admit its own national. Consequently such persons will further stay in the country, very often for quite a long time and mostly living in rather precarious conditions. Usually, after some time, when the number of those people has enormously increased, their status will be legalized.⁶¹

The Global Compact for Migration clearly acknowledges the problems just mentioned by stressing the duty of States to readmit their nationals and to offer a real chance of sustainable reintegration. States commit themselves to ensure that the return of all migrants, but in particular of those not having a legal right to stay *“is safe and dignified, follows an individual assessment, is carried out by competent authorities through prompt and effective cooperation between countries of origin and destination, and allows all applicable legal remedies to be exhausted, in compliance with due process guarantees, and other obligations under international human rights law.”*⁶²

4. Final Remarks

As we have seen “hard” public international law does not very much contribute to the creation of a comprehensive international migration regime, apart from the human rights guarantees on the global and regional plane which grant essential legal protection at all stages of the migration process. On the regional level, however, much more detailed rules can be found; it suffices to relate in this context to the EU law.

On the other hand, the Global Compact for Migration presents a broad array of “soft” law rules claiming to establish common standards for international migration. This political turn is quite interesting, because since long it was usually recognized that “hard” legal obligations based on customary and treaty law and, if possible, enforced by an international judiciary are the best way to achieve satisfying results. Has public international law become overstrained, and are now only more cautious “soft” methods held to be more successful?

Actually, we live in a time where the international order as established since 1945 by the UN Charter and many other international agreements is clearly under pressure. The conduct of aggressive wars, evident breaches of treaty obligations, rapidly growing disrespect to judgments of international courts – all this indicates an alarming renationalization in many areas of international law meaning a regression of the legal development on the global scene. It is not yet decided whether this is a definitive evolution. But it may explain why the States shrink back from creating legally binding instruments and prefer modes of problem solution that gives them more flexibility to go forward or backward without risking the blame of a violation of the law which is a reproach that is even for dictatorships at least inconvenient.

If this assumption is correct we have to ask whether the Global Compact has laid a sound basis for a global migration regime. I cannot deal with all the relevant aspects. I confine myself to examine whether the concept of the Global Compact as such is convincing. Here I have some doubts.

⁵⁸ Cf. Art. 12, paras 2 and 3 ICCPR; Art. 13 ICCPR; Art. 12, para. 4 AfCHR, Art. 22, para. 6 AmCHR; Art. 2, paras 2 and 3 Protoc No. 4 to ECHR.

⁵⁹ Cf. Art. 12, para. 4 ICCPR; Art. 3 Prot. No. 4 to ECHR.

⁶⁰ See Art. 4 Fourth Protocol to ECHR.; Art. 12, para. 5 AfCHR expressing a restrictive definition of “collective expulsion”; Art. 22, para. 9 AmCHR.

⁶¹ To the German attempt to establish a new status for formerly only “tolerated” people (“Chancenaufenthaltsrecht”) see Bubrowski, cf. footnote 55, p. 2.

⁶² GCM No. 37 lit. e.

Certainly, migration is a reality, even a multidimensional reality⁶³. The Global Compact, however, seems to present migration as a necessity, even as a cornerstone of sustainable development.⁶⁴ This interpretation quite naturally leads to overemphasising the benefits of migration vis-à-vis the difficulties which many States and societies may encounter for very different reasons and might reflect a rather naive multilateralism. It is true that the Compact does not completely overlook the requirement of mutual respect of cultures, traditions and customs,⁶⁵ though the impression prevails that all real or possible difficulties must be overcome to flatten the way for a smooth migration. But the picture of migration is much more complex than the Global Compact is painting. E.g., there are differences between migrants who leave their countries for political or economic reasons or because of natural disasters, and particularly between regular and irregular migrants. Of course, the Compact notes the different motivations for migration.⁶⁶ However, it is not always clear whether the existing differences are fully reflected by the objectives and commitments that the Global Compact establishes.⁶⁷ States might be swiftly overstrained if they are expected to deal with irregular migrants in the same way as with regular migrants apart from their obligation to respect human rights. In many cases the sheer number of irregular migrants mirrors the degree of the loss of the States' control of their territory and touches at its essential interests. In the EU the growing number of irregular migrants is undermining the asylum or Schengen system, and it is for this reason that just today (9 and 10 February 2023) the European Council is convening in Brussels to discuss our topic – and not for the first time.⁶⁸

All these difficulties can only be overcome if the States are willing to cooperate and to tackle international migration as a common task. Though the perspectives just in these times are not very promising, the Compact rightly appeals to all States for more cooperation in the interest of all.⁶⁹ “No State can address migration alone.”⁷⁰ Only solidarity which has evolved, at least in theory, to a very important principle of public international law,⁷¹ can enable us to master the challenges of international migration.⁷² But it must be exercised with a sound judgment and an eye for proportion and gradation. The responsibility of all States, those of origin, transit and destination, and of the members of the societies concerned and, certainly, of the migrants themselves must be reasonably balanced. Especially the last aspect has not yet received the necessary attention in the discussions on international migration.⁷³

⁶³ GCM no. 35.

⁶⁴ GCM nos 15 and 35.

⁶⁵ GCM nos 8, 9 and 32.

⁶⁶ GCM no. 18.

⁶⁷ E.g., GCM nos 10, 19 (e), 27, 28 and 32; cf. also Tomuschat, cf. footnote 9, p. 213.

⁶⁸ T.G., “Schengen in Gefahr?“, Frankfurter Allgemeine Zeitung, January 26, 2023, p. 4.

⁶⁹ GCM nos 11, 39 and passim.

⁷⁰ GCM no. 8.

⁷¹ Wolfrum, R. and Kojima, C. (Editors): “Solidarity: A Structural Principle of International Law”, Springer Berlin Heidelberg 2010.

⁷² Gakis, cf. footnote 40, pp. 790 et seq.; Thym, cf. footnote 54, pp. 183 et seq.; Uerpmann-Witzack, R., ”Ordnung und Gestaltung von Migrationsbewegungen durch Völkerrecht, 49 Berichte der Deutschen Gesellschaft für Internationales Recht, 2018, pp. 215 – 246 (231-2).

⁷³ Tomuschat, cf. footnote 9, pp. 221 et seq. But see also the Melilla judgment of the ECtHR, cf. footnote 30.

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22. Human Rights Committee in Case Communication No. 3042/2017, A.S. et al. v. Italy, 4 November 2020, UN Doc. CCPR/C/130/D/3042/2017
23. Judgment of the European Court of Human Rights (ECtHR) in Case No. 27765/09 Hirsi Jamaa and others v. Italy, 23 February 2012 (rectified 16 November 2016);
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27. Decision 2022/382 of the Council (4 March 2022), O. J. No. L 71 (4 March 2022), p. 1. See Gakis, S., “L’activation de la directive ‘Protection temporaire’: l’apport d’un instrument sui generis à la protection des personnes déplacées”, 33 “Revue Tri-mestrielle des Droits de l’Homme”, 2022;
28. Judgment of the European Court of Justice in Case C-72/22PPU, preliminary ruling from Lithuania, 30 June 2022;
29. Cf. Advisory Opinion of the Permanent Court of International Justice in Case *Nationality Decrees in Tunis and Morocco*, 7 February 1923, PCIJ, Series B.

IMPACT OF INTERNATIONAL CLIMATE POLICY ON MIGRATIONS

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Abstract

The aim of the paper is to determine the impact of international climate policy on international migrations of population. The authors will present the main assumptions of the climate policy, including the strategy of the European Green Deal, the goals of sustainable development in the context of climate change affecting population migration. The article also addresses the issue of the correlation between climate change and political stability and the risk of conflicts. An important issue raised in this publication is the question of global solidarity in the fight against the negative effects of climate change and the possibility of implementing in practice such mechanisms as loss and damage fund.

Keywords: climate policy, migration policy, climate change, European Union climate policy, population migrations.

Introduction

In the seventeenth edition of the Global Risk Report published in January 2021 by the World Economic Forum, the first five largest and most likely threats in the 5–10-year perspective concerned the state of the natural environment. According to experts and leaders of the World Economic Forum, the threats with the highest probability over the next ten years are climate action failure, extreme weather, biodiversity loss, natural resource depletion and overall human environmental damage. In order to emphasize the credibility of this data, it is worth noting that already in 2006, in the previous edition of this Report, warnings were made against the risk of a pandemic and the related consequences for the population and economy.¹ The focus on economic growth and Gross Domestic Product as the main determinant of economic success has led to the pursuit of growth at all costs, gigantic over production and wasteful management of natural resources. Sustainable economic growth means balance in economic, social, and ecological dimensions. The current model of economic development leads to a significant disturbance of this balance, both in the ecological and social dimension. Some hope for the improvement of the situation is given by the fact that each year climate action is more and more decisive, and numerous scientific studies on climate change and its consequences are gaining in importance. The interest in this subject is primarily due to the fact that the issues raised touch the core of the political, social and ecological transformations of the 21st century, such as environmental and climate justice, mechanisms of inclusion and exclusion, and relations between the so-called the rich North with the countries of the poor South². Reaching the roots of the problem, it should be noted that since the beginning of the second industrial revolution, i.e., for about 150 years, man has been increasingly engaged in activities that exploit natural resources, which results in the growing extraction and consumption of fossil fuels. As a consequence, this turns into constantly growing emissions of greenhouse gasses into the atmosphere, which contribute to climate warming and numerous negative consequences for the natural environment and humanity.

¹ The Global Risks Report 2006 – World Economic Forum 2006 available on-line http://www3.weforum.org/docs/WEF_Global_Risks_Report_2006.pdf [L.s.15.01.2022].

² Klepp, S., Klimawandel und Migration Heterogenes Forschungsfeld und politisierte Debatte, 2018. <https://www.bpb.de/shop/zeitschriften/apuz/269304/klimawandel-und-migration/> [L.s.05.01.2023].

In the literature on the subject and numerous reports on climate change, scientists define the so-called climate tipping points (*Climate tipping points - CTP*), beyond which certain negative climatic consequences can be expected. The current 1.1°C increase in global temperature above pre-industrial levels is already at the lower end of the five CTP uncertainty ranges. Exceeding the threshold of 1.5-2°C will result in the melting of glaciers and the extinction of coral reefs at low latitudes. Crossing further CTP tipping points in the near future will lead to significant, policy-relevant impacts, including a dramatic rise in sea levels due to the collapse of ice sheets in addition to the loss of the planet's biodiversity³.

1. Climate change and migrations

One of the negative consequences of this process which will be addressed in this article, will be the increase in international migration of people caused by climate change. As already mentioned, international migrations of people touch the heart of socio-economic, political, and ecological events in the current century and require states, international organizations, and societies to take adaptation measures to limit the negative consequences of this process as much as possible. With constantly growing awareness of climate change, its impact on international migrations has also become the subject of numerous studies, scientific publications and reports from international government institutions, international organizations, and non-governmental organizations. At the same time, it is worth remembering that migrations are not only challenges and threats but can also bring numerous benefits for migrants and host countries. They are also significant for national and international policies. They force states to take action to create legal and institutional solutions that will allow, at least to a minimal extent, to manage population movements.

The size and intensity of migrations result from many factors of an economic, demographic, social and increasingly environmental nature⁴, with the assumption that the latter factor - environmental - is likely to play an increasingly important role in the coming decades. The hypothesis formulated in this way also results in the purpose of this article, which is to assess the impact of international climate policy on international population migrations. First, the European Union's climate policy will be analyzed in the context of counteracting the negative effects of climate change, which is an important factor inducing national and international migrations of the population. The next part of the article is devoted to reflection on the impact of climate change on international migrations of people and the role of international institutions, proper regulations and initiatives in this area. The study ends with a summary containing the main conclusions from the conducted research.

2. Climate policy of the European Union

The climate policy of the European Union has undergone numerous transformations in recent years. It originates from the EU environmental policy initiated in the 1970s. In 1972, during the meeting of the European Council, the need to develop European Union's environmental policy was pointed out. At the same time, in the Single European Act of 1987 the 'environment' section was added, which became official EU policy in 1993 under the Maastricht treaty on promoting sustainable development. The 1999 Treaty of Amsterdam established an obligation to integrate environmental protection into EU sectoral policies to promote sustainable development⁵. Additionally, the framework of the modern EU climate and energy policy in the perspective of 2030 was proposed by the European Commission on January 22, 2014 and adopted during the meeting of the European Council on October 23-24, 2014. The proposed new goals concerned:

1. 40% reduction in emissions greenhouse gasses compared to 1990,
2. increasing the share of energy from RES in total energy consumption in the EU to 27%,

³ Armstrong McKay, D.I., Staal, A., Abrams, J.F., Winkelmann, R., Sakschewski, B., Loriani, S., Fetzer, I., Cornell, S.E., Rockstroem, J., Lenton, T.M., Exceeding 1.5 C global warming could trigger multiple climate tipping points. "Science", 2022. 377(6611).

⁴ Tutak, G., Migracje klimatyczne (nie)obecne wyzwanie? "Człowiek w Kulturze", 2020. nr. 30, p. 219.

⁵ Szpak, K., Polityka klimatyczna Unii Europejskiej w perspektywie 2050 roku, w: J. Gajewski, W. Paprocki (red.), Polityka klimatyczna i jej realizacja w pierwszej połowie XXI wieku, Centrum Myśli Strategicznych, Sopot, 2020. s. 35.

3. increasing energy efficiency by 27%,
4. completing the internal energy market.

These provisions were updated in 2018, in which the targets for RES (from 27 to 32%) and energy efficiency (from 27 to 32.5%) were increased⁶.

Currently, the most important EU initiative in the field of climate policy is the European Green Deal which is the most ambitious initiative in the history of the European Union in economic, political and social terms. Green Deal applies to all sectors of the economy, in particular energy, agriculture, transport, construction and such industries as steel, cement, ICT, textile and chemical industries.

It aims to "transform the EU into a fair and prosperous society with a modern, resource- efficient and competitive economy with zero net greenhouse gas emissions in 2050, and where economic growth is decoupled from the use of natural resources"⁷. The vision of climate neutrality was presented by the European Commission as early as November 2018 in the document Clean Planet for All. It sets out the goal of "achieving net-zero greenhouse gas emissions by 2050 through a socially just and cost-effective transition"⁸. Climate neutrality was also supported by the European Parliament.

The implementation of the European Green Deal is to be based on the following strategic elements: energy efficiency, Renewable Energy Sources, clean mobility, competitive industry and circular economy, development of infrastructure and interconnections between countries, development of the bioeconomy and CO₂ sinks, and CO₂ capture and storage. The Green Deal, as another tool for implementing EU resolutions, sets the target of reducing CO₂ emissions by at least 55% by 2030 compared to 1990 levels. This is related to the revision and extension of the CO₂ emissions trading system (ETS) and the increase in the prices of allowances⁹.

The European Union's climate policy uses numerous tools to support its goals. In addition to the ETS, these are modernization funds, planning and management documents, such as national energy and climate plans, as well as standards related to the use of specific technologies. Therefore, the strategy refers to the introduction of new, broader EU climate policy instruments and tools. At the same time, the European Commission proposes that 25% of funds under all EU programs should be allocated to combating climate change. It is estimated that achieving the assumed goals only in the perspective of 2030 will cost an additional EUR 260 billion per year¹⁰.

When evaluating the current EU climate policy, attention should be paid to its significant effectiveness. Between 1990 and 2018, the European Union reduced its greenhouse gas emissions by 23%, while its economy grew by 61%. This was influenced by the transformation processes in the countries of Central and Eastern Europe, but also by the phenomenon of transferring greenhouse gas emissions outside the European Union (*carbon leakage*). As a result, it may even lead to an increase in global emissions, e.g., due to less advanced production methods used on other continents. At the same time, the European Green Deal itself noted that the existing tools will not allow it to achieve climate neutrality by 2050. The implementation of the EGD strategy will have a significant impact on the economies of the Member States, in particular those countries using high-emission energy carriers¹¹. This may reduce the competitiveness of these economies and make them dependent on imported low- carbon technologies. Indirectly, the scale of energy poverty of many citizens of the European Union may increase.

When assessing the current EU climate policy and its assumptions for the coming decades in the context of its impact on the phenomenon of international migration of people, it should be stated that the actions

⁶ Ibid, s. 38.

⁷ European Commission, Communication from the Commission The European Green Deal (COM (2019) 640 final, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:52019DC0640#> [L.s. 10.01.2022].

⁸ European Commission, Communication from the Commission Clean planet for all, a european strategic long-term vision for a prosperous, modern, competitive and climate neutral economy COM/2018/773 final, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2018%3A773%3AFIN> [L.s. 15.01.2022].

⁹ Marszałuk, P., Markowski, M., Europejski Zielony Ład – geneza, wprowadzenie i planowane rezultaty, 2021. <https://crido.pl/blog-business/europejski-zielony-lad-geneza-wprowadzenie-i-planowane-rezultaty/>, [L.s. 05.01.2023].

¹⁰ Szpak, K., Polityka klimatyczna ..., 2020.s. 43.

¹¹ Ibid s. 46-50.

taken by the European Union countries are insufficient to be able to reverse the negative climate trend on a global scale, and thus achieve a significant impact on the reduction of climate refugee phenomenon. However, they may lead to a situation where the European Union countries will be better prepared to manage this phenomenon. In addition, the climate policy pursued by the EU is a kind of signpost and direction for necessary actions in the field of climate protection for other countries. It will also have a significant impact on the countries in the immediate vicinity of the European Union, especially North Africa - a continent that is already suffering from the negative consequences of global warming. A well-thought-out and long-term climate policy of the European Union will not prevent the negative consequences of climate warming, but it is able to develop the necessary tools to better prepare and adapt to changing environmental conditions, including those related to the growing number of climate migrants.

3. Climate change and international population migrations

The effect of destructive human activities is seen in more frequent and sudden atmospheric phenomena such as hurricanes, storms, floods and intense heat along with prolonged droughts. The negative consequences of climate change will affect everyone. Statistics of the United Nations Development Program indicate that in 2019, as a result of natural disasters, the number of people forced to migrate amounted to 24.9 million people of which 96% of cases were the result of sudden weather events such as storms, fires or floods¹². In 2019, due to floods and tropical storms, most people had to migrate in the region of East and South Asia and the Pacific.

Sudden weather events most often result in internal migrations. People do not want or are unable to decide on further directions of migration, while counting on the possibility of a quick return to the abandoned zone of residence affected by the climate catastrophe. According to the Displacement Monitoring Center: in 2021 the number of internal migrants exceeded 38 million people, of which 23.7 million are migrations caused by climate disasters. The remaining 14.3 are conflict and violence-driven migrations¹³. The latter factor is also often closely related to climate change as there is a strong correlation between countries and regions most vulnerable to climate change and those that are experiencing conflict or violence. Conflicts in many regions are caused by dwindling natural resources such as water and farmland due to changing climate. According to Polish political scientist Joanna Gocłowska-Bolek from the Center for Political Analysis and Security Studies at the University of Warsaw, this is particularly visible in politically unstable countries such as Syria, Lebanon, or Palestine, where droughts exacerbate existing crises. The Middle East is particularly affected, where 90% of area is among the highest risk of droughts, making it the region with the greatest water deficit in the world. The expert lists many regions where conflicts over water are on the agenda. Pakistan, Nepal, Bhutan and Bangladesh accuse India of collecting water, while Kazakhstan, Uzbekistan and Turkmenistan demand "water concessions" from Tajikistan and Kyrgyzstan. The Jordan River has been a bone of contention between Israel, the Palestinians, Jordan and Syria for decades, and the Nile River between Egypt, Sudan and Ethiopia. Huge Chinese investments threaten the water security of India, Bangladesh, Vietnam, Laos, Cambodia, and Thailand. The most imaginative example of the scale of human dramas and migrations caused by limited access to water is Syria. A prosperous country with an efficient agricultural economy, profitable cotton crops and thriving tourism was devastated in a few years by warfare caused by the most severe drought in 900 years, because of which 800,000 people out of 17 million Syrian citizens lost their source of income, and 1.5 agricultural workers emigrated to the cities. Destitute, frustrated farmers became an easy target for populists and terrorist organizations, which eventually led to a civil war. After more than 10 years conflict 14.6 million people need humanitarian and protection assistance in Syria, 6.7 million was internally displaced 6.6 million Syrian refugees worldwide, of whom 5.5 million hosted in countries near Syria like Lebanon, Turkey, Jordan.

Worrying forecasts are presented by the World Bank. According to its experts, by 2050 there will be 143 million climate migrants from Latin America, sub-Saharan Africa and Southeast Asia¹⁴. Whereas

¹² Global Report on International Displacement (2020), Internal Displacement Monitoring Centre, s. 4.

¹³ Internal Displacement Monitoring Centre, Global internal displacement database, <https://www.internal-displacement.org/database/displacement-data> [L.s. 5.01.2022].

¹⁴ Rigaud, K.K., et al. Groundswell: Preparing for Internal Climate Migration, The World Bank, 2018. s. 110.

updated Groundswell report published by the World Bank in 2021 predicts that changes could force 216 million people across six world regions to move within their countries by 2050¹⁵.

Rising sea levels due to global warming will also be an important problem in the future. There are estimates that by 2100 the water level in the oceans will rise from 26 to even 98 centimeters¹⁶. The problem is even more important because 10% of the world's population lives in coastal areas. Island states are the most vulnerable to rising sea levels, but not only. This problem will also affect many areas of North America and Europe, where the rising water level will make many areas uninhabitable.

Despite the deep relationship between the environment and human life, the issue of climate migration until the 1990s remained on the margins of public and scientific debate. Nowadays, climate migration is becoming an important issue attempting to be addressed by the international community. The interest in the issue of migration in the context of climate change results from its global nature. Climate migration in the future may reach an unprecedented scale. It will have an impact on the global economy, the development of international relations and the financial condition of countries.

4. The lack of law

Despite the growing awareness of climate change and its direct impact on population movements, international law has not yet been adapted in this area. The lack of legal regulations in relation to climate migrants is referred to as the "rights deficit"¹⁷. This situation means that people affected by the effects of climate change are not entitled to resettlement rights to other countries. Conventions protecting human rights, created several decades ago, do not take into account changes, processes and mechanisms responding to climate phenomena. This means that there is still a need for further work on legal solutions regulating international migrations of people caused by climate change. The most appropriate actor to regulate migration caused by climate change at the international level is the UN. In recent years, two of its bodies have been particularly active in this regard: the Office of the United Nations High Commissioner for Refugees (UNCHR) and the Secretariat for work on the United Nations Framework Convention on Climate Change (UNFCCC)¹⁸. During the 16th Climate Conference in Cancun in 2010, a decision was signed under which the member states of the Convention are to take action to become familiar with the degree of impact of climate change on migration and to coordinate it at the regional, national, and international level. One of the achievements of the summit was the adoption of a package defining a framework for adaptation to climate change. a decision was made to create the Climate Fund, in which developed countries have committed themselves to provide financial assistance to developing countries from 2020 for activities related to climate change¹⁹. In 2021, a group was established at the climate conference in Doha, whose task was to include the issue of climate migration in global negotiations²⁰. The appointed advisory group presented a range of proposals for incorporating the discussed issues into the text of the Paris Agreement and places in the document where references to migration caused by climate change, which is unfavorable for humans, should be included. According to experts, it was necessary to indicate the need to take measures to prevent and minimize the movement of people. Migration should be included in the procedures dealing with the impact of climate change on the population, together with the proposal of remedial measures, in the provisions on adaptation, prevention, reduction and removal of losses and damage. The group also gave examples of medium-term actions aimed at e.g., provide support to the governments of Member States, local authorities or organizations in including climate change in the created strategies and action plans, while ensuring funding for activities related to climate migrations. Particular emphasis was placed on facilitating migration and planned relocations, which, carried out in consultation with vulnerable communities, can result in creating new, safe living environments and thus reduce the negative impact of climate change

¹⁵ Clement, V., Rigaud, K. K., de Sherbinin, A., Jones, B., Adamo, S., Schewe, J., Sadiq, N., Shabahat, E. 2021. Groundswell Part 2: Acting on Internal Climate Migration. World Bank, Washington, DC. © World Bank., <https://openknowledge.worldbank.org/handle/10986/36248> [L.s. 5.01.2022].

¹⁶ Tutak, G., Migracje klimatyczne ..., 2020. s.213.

¹⁷ Ibid s. 217.

¹⁸ Krajewski, P.W., Groszkowska, K. Environmental migration in international law and politics, "Journal of Modern Science", 2018. vol 1(36), s. 150.

¹⁹ Tutak, G., Migracje klimatyczne ..., 2020. s. 222.

²⁰ Ibid, s. 150.

on living conditions. Moreover UN migration experts indicate on necessity intensification analysis for reduction negative ones effects migration in areas such as trauma and psychological impacts; direct economic costs; access to food and water; loss of income and livelihoods; loss of future outlooks and opportunities; reduced health and access to healthcare; reduced safety of women and girls; reduced access to education; reduced access to political representation; disruption of the community; loss of sense of place/identity. Experts also note additional risk of people moving and ending up in places that are at even higher risk to future hazards. Data on mobility patterns and trends need to be leveraged to reduce these risks through mobility-informed, anticipatory planning²¹.

5. Climate migration in the Paris Agreement

The issue of climate migration has also been included in the Paris Agreement, which is the first binding international agreement to mention migrants in the context of climate change²². The Paris Agreement includes three important elements for displacement and human mobility issues:

1. Recognition that climate change is a common concern of humankind and includes a reference to migrants, asking Parties to respect, promote and consider their respective obligations towards migrants, among others, when taking actions to address climate change.
2. References to the protection of people, the resilience of communities and the importance of livelihoods. These are essential entry points for addressing environmentally linked root causes of forced displacement such as access to water, food, energy, and the need for livelihood opportunities to enable people to remain where they live.
3. Request to the Executive Committee of the Warsaw International Mechanism (WIM) on Loss and Damage to establish a task force on displacement. This task should “develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.” This is also an acknowledgment of the dangers of displacement and a welcome recognition of climate change as a factor of displacement²³.

Conclusions

Millions of people around the world are forced to move from uninhabitable places, a trend will only increase in the coming years. These migrations are driven by the challenges of producing the minimum amount of food and basic goods that are necessary for human survival such as prolonged periods of drought or excess water destroying harvests. In order to reduce the size of migration and change the direction of people's movement, the international community should intensify its support and repair consequences, especially in the local environment, most affected by climate change. The least developed countries, whose share in global CO₂ emissions and thus the impact on climate change is negligible, are the hardest hit by the disasters caused by climate change. An example of such a country is Pakistan, which is particularly affected by climate change due to intensely melting glaciers causing flash floods. In 2022, about 1,350 people died in Pakistan as a result of flooding and 50 million people had to evacuate. Losses were estimated at \$30 billion. I the Convention on Climate Change (COP27), that took place in 2022 in Egypt, concluded with a historic decision to establish and operationalize a loss and damage fund. Development countries particularly vulnerable to the effects of the climate crisis will be

²¹ Platform on disaster displacement, 15 observations on disaster displacement as loss and damage, https://disasterdisplacement.org/wp-content/uploads/2022/11/PDD-15_Observations-2022-ENG-screen_compressed.pdf [L.s. 15.01.2022].

²² Preamble to the Paris Agreement, Official Journal of the European Union, L 282/4, 19/10/2016.L 282/4, 19.10.2016. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22016A1019\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22016A1019(01)) [L. s. 10.01.2022].

²³ The office of the United Nations High Commissioner for Refugees (UNHCR), Frequently asked questions on climate change and disaster displacement, 6.11.2016, <https://www.unhcr.org/uk/news/latest/2016/11/581f52dc4/frequently-asked-questions-climate-change-disaster-displacement.html> [L. s. 12.01.2022].

able to get refunds for losses arising from droughts, floods, rising seas and other disasters that are attributed to climate change²⁴.

Actions taken by international organizations, including the UN, indicate the direction debate on climate migration has taken. One gets the impression that the problem is dealt with almost exclusively taking into account the measurable damage and economic losses caused by natural disasters, while minimizing or even ignoring the real personal dramas of the people affected by this misfortune.

Unfortunately, narrowing the debate on climate migration to only two areas, i.e., sudden disasters and damage recovery, is not a trend that everyone is satisfied with. This reasoning is too narrow as it limits the negative impacts of climate change to natural disasters and forced migration to their damaging consequences. Climate change is a phenomenon that progresses over time, causing the gradual transformation of numerous ecosystems, as a result of which many existing places that are the basis of existence of millions of people are no longer suitable for life, thus forcing the population living in these areas to migrate. Taking up the issue of climate migration is the first step towards building new standards of rights for migrants. However, the actions taken are still insufficient both in the areas of climate change and in the conduct of migration policy. At the same time, it is worth emphasizing that migration can be beneficial for both migrants and the public. Often, migration is the only solution that guarantees a decent existence. Therefore, the focus should not be on preventing migration. Most crucial is an appropriate migration policy that guarantees social inclusion for migrants and creates appropriate conditions for development, education, employment, and health care. Counteracting the negative effects of climate change can help societies limit the negative effects the humanitarian crisis caused by climate change.

²⁴ United Nations Environment Programme (UNEP), COP27 ends with announcement of historic loss and damage fund, 22.11.2022, <https://www.unep.org/news-and-stories/story/cop27-ends-announcement-historic-loss-and-damage-fund> [L.s.12.01.2022].

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SOLUTION OR PROBLEM: A SOCIAL WORK VIEW OF UK FORCED MIGRATION LAW AND POLICY

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Abstract

The UK receives a tiny proportion of the world's forced migrants and even in Europe is 19th out of 28 countries for numbers received. Nonetheless, immigration is used as a major political issue with public opinion weaponised to achieve the disastrous exit from the European Union. The media narrative encourages the population to believe that there is an 'invasion' of people making the highly dangerous journey across the English Channel in small boats and that they are not 'real' refugees. A plethora of law and policy responses means that individuals are treated differently depending on where they came from, when and how they came.

This paper will give a synopsis of the changes to law and policy that proscribe the 'legal' and 'illegal' routes to the UK for forced migrants. We will consider the outcomes of the financial investment in exclusion (border force, removal centres, planes to Rwanda, British police in France) in the context of a global economic and environmental emergency. Their intended and unintended consequences will be reviewed (destitution and homelessness, Windrush, loss of workforce, social insecurity).

Drawing on the five proposals of the People's Charter for an Eco-Social World presented to the United Nations we propose an alternative approach to migration which values the human agency and capacity of individuals. We give examples from UK and elsewhere to illustrate the success of inclusion over exclusion and offer a reflection on the ability of social work to work within and with contexts.

Keywords: Forced migration, strengths approach, social work, eco-social, human rights

Introduction

We welcome this opportunity to share our experience and learning from over 20 years of responding to the challenges and opportunities presented by people who have experienced forced migration and who seek to settle in southwest England. Immigration is being used as a major political issue in the UK by a right-wing government, with public opinion weaponised to achieve the disastrous exit from the European Union. The repercussions of leaving the European Union and increasing the barriers to entry are having serious consequences for migrants, for UK citizens, for the country's welfare services, agriculture, and the economy. Our intention is to share learning from the UK's mistakes and to offer alternative responses to the fact of growing global human movement. We believe that a strengths approach is fundamental to transforming a 'problem' of migration into a solution that benefits both migrants and the receiving community.

The UK receives a tiny proportion of the world's forced migrants and even in Europe is 19th out of 28 countries for numbers received. Nonetheless, immigration is used as a major political issue with public

opinion weaponised to achieve the disastrous exit from the European Union. The media narrative encourages the population to believe that there is an ‘invasion’ of people making the highly dangerous journey across the English Channel in small boats and that they are not ‘real’ refugees. A plethora of law and policy responses means that individuals are treated differently depending on where they came from, when and how they came.

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1. Approaches to Migration

1.1. The Global Picture

The current turmoil in UK politics is giving rise to rapid and inept law-making with scant regard for human rights, as if it is possible to simply legislate our way out of trouble. So, we begin with an up-to-date synopsis of the defensive use of law and policy by the UK government as it tries to stem the tide of migration – with the same chance of success as the attempt by Canute, the 11th century King of England, Denmark and Norway to halt the incoming sea. The UNHCR tracks the number of people who are forcibly displaced and shows the exponential rise year on year. By mid-2022 this was 103 million worldwide.¹ The combination of war, persecution and the climate emergency forcing people to move, indicates that this number will continue to rise. The majority of people displaced either relocate within their country of origin or cross to a nearby country and less than 10% make the perilous journey to Europe to seek asylum. In Europe the UK is 19th out of 28 countries for numbers received with Germany first. Every country has a different approach to receiving forced migrants – for example Uganda, one of the 6 countries with the highest number of refugees, provides land and basic support to enable people to integrate as fast as possible. Lebanon with a population of 6.8 million and severe economic problems, is hosting an estimated 1.5 million refugees from Syria in addition to hundreds of thousands of Palestinian refugees.²

1.2. U.K. Responses

In contrast, however, the UK has politicised the ‘problem’ of migration by investing resources in detention centres, strengthening its border force, contracting with private providers, and passing a raft of legislation to reduce people’s access to their human rights.³ ⁴ For example, the introduction of a Hostile Environment policy⁵ by the UK’s Home Office in 2012 fuelled xenophobia and created a culture that enabled the public to be convinced 8 years later that a vote to leave the European Union was in their best interests. The UK’s right-wing media has incited fear that this small island is being overwhelmed

¹ UNHCR, “Refugee Data Finder” United Nations High Commission for Refugees 2022. <https://www.unhcr.org/refugee-statistics/> [L.s. 24.2.2023].

² NRC, “These 10 countries receive the most refugees” Norwegian Refugee Council website 2020. <https://www.nrc.no/perspectives/2020/the-10-countries-that-receive-the-most-refugees/> [L. s. 24.2.2023].

³ Bellinger A. and Ford D., “The Strengths Approach in Practice: How it changes lives”, Policy Press 2022.

⁴ Team of Authors, Editor C. Maloney, “Seeking Asylum and Mental Health: A Practical Guide for Professionals” Cambridge University Press 2022.

⁵ Clatworthy, L., “A Qualitative Study Exploring the Impact of the Hostile Environment on Plymouth’s Refugee Population”, Students and Refugees Together (START) website 2021. <https://www.studentsandrefugeestogether.com/wp/research/> [L.s. 24.2.2023].

by migrants. In November 2022 according to official figures there were 231,597 refugees, 127,421 pending asylum cases and 5,483 stateless persons in the UK including recent Ukrainian refugees. The total number of refugees, including those from the Ukraine, people waiting for their claim to be decided and stateless people represented only half a per cent (0.54%) of the UK's total population.⁶ There were 72,027 asylum applications in the UK in the year ending September 2022. However, the UK only offered protection (in the form of refugee status, humanitarian protection, alternative forms of leave and resettlement) to 17,378 people (including dependants) in this period.⁷ Fear is rising nevertheless with the surge of people attempting to reach the UK across the English Channel in small boats organised by people traffickers (and it should be said with inadequate public services available to receive them). More than 45,000 people used this route last year in the absence of more government-endorsed pathways.⁸

In response to 'the problem', the UK government has taken steps intended to deter what they call the 'flood of migrants', ostensibly to break the business model of people-smugglers risking people's lives. A scheme to send people seeking asylum via so-called illegal routes to Rwanda (yes, Africa) still forms part of the government's plan to deter forced migrants. This is in spite of the Rwandan government's appalling human rights record and the clear evidence that such offshore schemes have failed both in Israel⁹ and Australia¹⁰. So far, the UK has paid the Rwandan government £140m alone. (This does not include subsequent costs such as flights to Rwanda, food, accommodation, access to translators and legal advice).¹¹ To date however, no-one has been deported through this scheme due to appeals in law (despite a recent UK High Court ruling that it is lawful and does not breach the UN's Refugee Convention or human rights laws, astonishingly).¹²

The UK's asylum system costs £1.5bn a year.¹³ One reason why it might be so high is because of the time (sometimes years) taken to decide on applications and the costly systems to constrain people's freedom while they wait - people are unable to work while waiting for confirmation of their refugee status and must live in the accommodation provided. Of that 1.5 billion, £316 million has been invested in policing the British border in France in an unsuccessful attempt to intercept the small boat launches. Meanwhile new legal measures have been enacted that effectively remove people's right to seek asylum in the UK and construct people as 'illegal' by virtue of their means of arrival. The Nationality and Borders Act 2022 means there are now no safe and legal routes for people seeking asylum. The immigration rules make no provision for any person to come (or apply to come) to the UK for the purpose of making an asylum claim.^{14 15}

⁶ Refugee Action, "Facts About Refugees" Refugee Action website 2023. <https://www.refugee-action.org.uk/about/facts-about-refugees/> [L. s. 24.2.2023].

⁷ GOV.UK, "Summary of latest statistics: 4. How many people do we grant protection to?" UK Government website 2022. <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-september-2022/summary-of-latest-statistics> [L.s. 24.2.2023].

⁸ BBC, "How is the UK stopping Channel crossings and what are the legal routes to the UK?" British Broadcasting Company 2022a. <https://www.bbc.co.uk/news/explainers-53734793> [L.s. 24.2.2023].

⁹ Mack, E., "Like the UK, Israel tried sending refugees to Rwanda – it didn't work" Independent 2022. <https://www.independent.co.uk/voices/refugees-migrants-israel-britain-rwanda-b2060595.html> [L. s. 24.2.2023].

¹⁰ Breeze, E., "The UK has long wanted an Australian refugee system. Here's how that failed spectacularly" The Big Issue 2022. <https://bigissue.com/news/social-justice/the-uk-has-long-wanted-an-australian-refugee-system-heres-how-that-failed-spectacularly/>[L.s. 24.2.2023].

¹¹ BBC, "What is the UK's plan to send asylum seekers to Rwanda?" British Broadcasting Company 2023, <https://www.bbc.co.uk/news/explainers-61782866> [L.s. 24.2.2023].

¹² BBC, "Rwanda migrant plan is lawful, High Court rules." British Broadcasting Company 2022b <https://www.bbc.co.uk/news/uk-64024461> [L.s. 24.2.2023].

¹³ Home Office blog, "Factsheet: Cost of the asylum system" Home Office Gov.UK 2022. <https://homeofficemedia.blog.gov.uk/2022/04/14/factsheet-cost-of-asylum-system/> [L. s. 24.2.2023].

¹⁴ Amnesty International, "Briefing: Safe and Legal Routes to the UK" 2021. https://www.amnesty.org.uk/files/2021-01/Amnesty%20International%20UK%20-%20Safe%20and%20Legal%20Routes%20Briefing_0.pdf [L. s. 24.2.2023].

¹⁵ Susserot, A., "Blog: The Myth of the 'Illegal' Asylum Seeker" Lancaster University 2021. <https://www.lancaster.ac.uk/law/blog/the-myth-of-the-illegal-asylum-seeker> [L. s. 24.2.2023].

1.3. Growing insecurity for UK Citizens

Challenging the legal right of some people's presence in a country has an 'unsettling' effect on others, including those with full rights to work and live in the UK. There are examples, following a change in the law of professionals on international contracts being deported.¹⁶ An even greater scandal and violation of rights was that of the Windrush generation. Windrush was the name of the first boat in 1948 bringing more than 5,000 people from the Caribbean at the invitation of the postcolonial government to bolster the workforce in post-war Britain. They settled, worked and paid tax for over half a century yet their right to remain was denied suddenly in 2010 because of a bureaucratic act by the government, who destroyed their original landing papers – the only legal document entitling them to be in England.¹⁷ Despite acknowledging that it was wrong to place the burden of proof on the people affected, even now the government is retreating from their commitment to compensation. A similar message of citizenship insecurity was strongly voiced recently by the Black British woman born in London who was repeatedly asked by a member of the royal household 'where she was really from'.¹⁸ This insecurity is justified when the Secretary of State can remove a person's citizenship without informing them! When the government decides to deprive a person of citizenship, it is exempted from having to give notice 'if it reasonably considers it necessary in the interests of national security, diplomatic relations or otherwise in the public interest that notice should not be given'.¹⁹

1.4. Social and Economic Failure

As people continue to arrive in small boats, UK policy and practice is revealed as ill-formed, short term, and unrealistic. A defensive reaction to the globally growing phenomenon of forced migration clearly doesn't work, just as demonstrated by King Canute! It is irrational to continue to do the same thing when it has been shown not to work. It is like the Englishman abroad who, failing to make himself understood, thinks that by simply shouting louder in English, people will understand him. The emphasis on 'strong borders' is to ensure that British welfare systems are not abused by 'health tourists' or people seeking an easy life at the cost of the state. It is ironic then that this is occurring alongside the failure of the welfare state²⁰ and many parts of the economy. Post-Brexit there are numerous staffing crises in the workforce in England – lorry-drivers, fruit pickers, hospitality staff and now most drastically in the health and care sector. An economy that has been supported so consistently by migrant workers is suddenly missing the 330,000 people who provided capacity and flexibility.²¹ The UK is now experiencing industrial action from staff in a range of essential services – nurses, ambulance drivers, junior doctors, teachers, lawyers, train drivers, civil servants, even the border force... whose concerns about staffing shortages are articulated as fear for the sustainability of their service. The lack of a reliable transport infrastructure, for example, means that people are struggling to get to where the jobs are, to fill the employment gaps left by migrants. Inflation and the rapid increase of basic living costs - food, fuel and housing - are placing more than one in five people below the poverty line.²² The theory of a

¹⁶ Townsend, M., "EU citizens who applied to stay in Britain facing threat of deportation" The Guardian 2021. <https://www.theguardian.com/politics/2021/aug/01/eu-citizens-who-applied-to-stay-in-britain-facing-threat-of-deportation> [L.s. 24.2.2023].

¹⁷ Gentleman, A., "The Windrush Betrayal: Exposing the Hostile Environment", Guardian Faber Publishing 2019.

¹⁸ Rhoden-Paul, A., "Ngozi Fulani: Lady Susan Hussey's race comments were abuse, says charity boss" British Broadcasting Corporation 2022 <https://www.bbc.co.uk/news/uk-63819482> [L.s. 24.2.2023].

¹⁹ Part 1, Section 10, Nationality and Borders Act 2022, Legislation.gov.uk, 2022. <https://www.legislation.gov.uk/ukpga/2022/36/section/10/enacted>. [L.s. 24.2.2023].

²⁰ Bellinger A., "Using the Strengths Approach when Welfare Systems Fail" Transforming Society blog <https://www.transformingsociety.co.uk/2022/01/14/using-the-strengths-approach-when-welfare-systems-fail/> [L.s. 24.2.2023].

²¹ O'Carroll, L. (2023) Brexit leaves UK short of 330,000 workers – report <https://www.theguardian.com/politics/2023/jan/17/shortfall-of-330000-workers-in-uk-due-to-brexit-say-thinktanks> [L.s. 24.2.2023].

²² Joseph Rowntree Foundation, "UK Poverty 2023: The essential guide to understanding poverty in the UK" <https://www.jrf.org.uk/report/uk-poverty-2023> [L.s. 24.2.2023].

high wage, high employment economy is a dream in the minds and rhetoric of politicians but a fading memory among its citizens.

2. Migration: Opportunities and Solutions

2.1. A Strengths Approach

Nevertheless, even within such a negative and defensive environment, through our practice with forced migrants in the southwest of England, we have learned to think differently and to act positively. Our book “The Strengths Approach in Practice: How it changes lives” records many of the individual achievements of students and refugees working together in an organisation called START over the past 21 years.²³ Students and Refugees Together (START) is an NGO that can reach all parts of the system as an agile micro-activist organisation where learning and social justice are core.²⁴ Since it began in 2001 more than 300 international and UK student professionals (social workers, occupational therapists, clinical psychologists among others) have achieved their qualifications through practical placements with refugees. More than 3,000 refugee households have been supported to access their entitlements and make choices about their lives and futures. Unjust law and policy have been challenged successfully – establishing precedents for the future - and in excess of £1million has been brought into the city from trusts and foundations, augmenting the local economy.

2.2. Social Work as a Force for Global Change

Last summer, the International Federation of Social Workers hosted an online summit “Co-designing a new eco-social world – leaving no one behind”.²⁵ This People’s Global Summit continues “to promote and support local and global people’s assemblies to unlock the means to co-design and co-build a new eco-social world.” Its vision is that “together, we (can) bring our local and global expertise from working in communities and populations where transformative change has taken place. Together we can build hope and new systems that foster peace, confidence, and security for everyone.” The voices of indigenous activists, academics, community development organisations and experts of every kind came together at the summit to produce a charter that is a living global document, accepted by the United Nations in July.²⁶ We encourage you to read it, and indeed to join the International Federation of Social Workers whose global definition of social work has been refined and approved to represent the diverse contexts of 141 countries.²⁷ Here we want to reflect on the Charter’s five proposals and consider what they might mean in practice for nation states, academic disciplines and individuals.

2.3. Proposals of the People’s Charter for a New Eco-Social World

2.3.1. *Proposal 1: Ecological integrity*

First and foremost, ecological integrity requires us to acknowledge the urgency of transitioning to non-extractive sustainable systems and developing cultures that respect the rights of nature. Unless we stop pandering to commercial interests in oil and gas extraction then in the relatively short term, the planet will be uninhabitable. Both the strengths approach and deep ecology begin with an absolute acknowledgement of the depth and severity of the challenges facing us now. These really cannot be

²³ Bellinger A. and Ford D., “The Strengths Approach in Practice: How it changes lives”, Policy Press 2022.

²⁴ Students and Refugees Together (START) website <https://www.studentsandrefugeestogether.com/wp/> [L.s. 24.2.2023].

²⁵ New Eco-Social World, The People’s Summit, Co-building a New Eco-Social world – Leaving No one Behind, Online 29th June – 2nd July 2022.

<https://newecosocialworld.com/?fbclid=IwAR3CSiEp0NrSmGvqDEzbQpjFFzrUXtJn4MUie9ZInG8Z0Vy530X3-21cATk> [L. s. 24.2.2023].

²⁶ New Eco-Social World, “The People’s Charter for an Eco-Social World” <https://newecosocialworld.com/wp-content/uploads/2022/09/Peoples-Charter-EN.pdf> [L.s. 24.2.2023].

²⁷ IFSW, Global Definition of Social Work. <https://www.ifsw.org/what-is-social-work/global-definition-of-social-work/> L. s. 24.2.2023].

overstated as wars, social and economic disasters distract us from the climate catastrophe rapidly reaching the point of no return. We have never needed such courage and creative thinking as we do now.

For many years, scientists have been warning about the catastrophic results for the climate if the world reaches average temperatures of 1.5 degrees centigrade above pre-industrial levels. According to the World Research Institute global temperatures have risen by 1.1 degrees so far, and already we are seeing an increase in natural disasters such as flooding, hurricanes, and other events. The latest IPCC report warns that the world is set to reach the 1.5 degrees centigrade point within the next two decades and that only the most drastic cuts in carbon emissions immediately will help prevent an environmental disaster. Continuing as we are now will mean a 4-degree centigrade rise by the end of the century – an environment unsustainable for human life.

Clearly there are grounds for despair, and the common human defence responses to such threats are all too familiar. None of us is immune to denial or to indulging in the kind of magical thinking that space exploration and big tech will rescue us.

Alternatively, the scholarship of deep ecologists has provided us with ways of navigating our situation. We have drawn from Naess' work to summarise these key principles.²⁸ His work distinguishes between surface ecology, with its focus on recycling waste or allocating blame, to a profound recognition that we must:

- have respect for all parts of the system, from microbe to constellation,
- maintain trust in the potential for true sustainability and
- acknowledge the depth and severity of the challenges.

Deep ecologists confront the catastrophic reality of our situation, urging us to grieve for what is lost and start from solid ground. The message of the environmental activists 'Just Stop Oil' is a good example. Although it is hard to imagine such a drastic change to our lifestyles and expectations, if extraction of oil, gas and other finite resources were to cease, the resulting crisis would release creativity. The money currently invested in destruction of the environment could be redirected to invest in sustainable development. The Covid pandemic offered a lesson about the potential of humans to adapt and to accommodate major differences in the way they live their lives. At country, community and individual level, all decisions and actions need to be directed by ecological integrity.

2.3.2. *Proposal 2: Economic reform*

Secondly economic reform means measuring the success of economies according to wellbeing rather than primarily financial growth. We are not proposing a fantasy world in which markets no longer exist. Rather it is to ensure the integration of markets with wellbeing so that growth is not at the expense of people and planet. Many of the predictions of the "Limits to Growth" report commissioned by the Club of Rome in 1972²⁹ have been proved accurate in that there are serious global challenges to food and water security, loss of biodiversity and widespread pollution, in addition to increasing climatic disasters of flooding and fires. Economists are now critiquing existing models of economic growth that are underpinned by unsustainable extraction and consumption.

In the words of Donella H. Meadows, one of the authors of the original report:

'The first commandment of economics is Grow. Grow forever. Companies must get bigger. National economies need to swell by a certain percentage each year ... The first commandment of the Earth is

²⁸ Naess, A. "The shallow and the deep, long-range ecology movement: A summary", 'Inquiry', 1973, 95–100.

²⁹ Team of Authors, Donella H. Meadows, "The Limits to Growth; a Report for the Club of Rome's Project on the Predicament of Mankind" Universe Books 1972.

*Enough. Just so much and no more. Just so much soil. Just so much water. Just so much sunshine. Everything born of the Earth grows to its appropriate size and then stops.*³⁰

New economic models are vital to promote human and ecological wellbeing. In 2019, New Zealand became the first country to adopt a "well-being budget", prioritising health and life-satisfaction rather than economic growth.³¹ Another radically different approach to economic growth is articulated in Kate Raworth's doughnut economics model in which all growth globally is contained within the earth's finite resources, and no-one should lack life's essentials.³² We believe that as long as public services are valued in financial terms and especially when they have to generate profit for shareholders, they will fail. In his presentation to the People's Global Summit, Remco van de Pas, a public health doctor and global health researcher from Germany, argued for an alternative paradigm of ecological wellbeing, growth in human and spiritual connection rather than economic growth, and a world in which good care consists of enough – not everything possible.³³ In this vein, START has preserved its independence and integrity by resisting temptations to scale up, to take on a regional or even national profile. As a small, locally specific organisation it remains flexible, nimble and responsive to constant changes and remains true to the core values of the strengths approach.

2.3.3. *Proposal 3: International solidarity*

Third is international solidarity: from national introspection to global cooperation. This principle is clearly illustrated by the failure of the UK's approach to migration. Seeking to protect national interests by denying the fact of migration constitutes a violation of human rights. Moreover it is an increasing drain on resources and ultimately ineffective. Compare the cost and effectiveness of excluding people arriving in small boats with the cost and effectiveness of the Ukrainian refugee scheme in the UK to which we will return.

Internationalisation at START extends to the staff group currently who include former refugees from Eritrea, as well as practitioners from the Czech Republic and USA. Moreover, START has provided practice placements for over 60 students from Germany, Norway, France, Switzerland, Poland and the Czech Republic, working alongside students from the UK. The benefits of internationalisation for the START community of learning and practice is incalculable. International students arrive with affinity for refugees in terms of needing to operate in English which is not their first language. They have to find themselves accommodation in the unfamiliar city of Plymouth. They too are bewildered initially by the labyrinthine bureaucratic systems governing access to health and care support. They are shocked by the "Hostile Environment" of policy and legislation towards refugees outlined above and their questions encourage a critical lens for home students to adopt in learning about social justice. They learn about the strengths approach; in turn they bring different models of practice and scholarship that has shifted the focus in student supervision to global issues of concern, most notably social work in a time of climate emergency, capitalism and migration. Undoubtedly their presence enriches START as a learning organisation and promotes relational practice with refugees from many different countries. Worldwide friendships are sustained among students fostering understanding and solidarity, all of which will inform their work as future professionals.

³⁰ Meadows, D. (2002) "Just so much, and no more", 'Resurgence' 2002 January/February, p.17.

³¹ Cohen, J., "Measuring Wellbeing: It's More Than GDP" Forbes 2018.

<https://www.forbes.com/sites/joshuacohen/2018/10/15/measuring-well-being-its-more-than-gdp/?sh=165b74ec4eaa> [L. s. 24.2.2023].

³² Raworth, K., "Doughnut economics: seven ways to think like a 21st-century economist", Chelsea Green Publishing 2017.

³³ Van De Pas, R., "The Limits to growth and its implications for health care" Co-Building a New Eco-Social World Leaving No-one Behind, Global Summit 2022. <https://newecosocialworld.com/speaker/remco-van-de-pas/> [L. s. 24.2.2023].

2.3.4. *Proposal 4: Employment and work*

The fourth proposal from the Charter is a call for employment and work to be valued and for people to have dignified working conditions. Public sector workers in the UK, including medical staff are now taking industrial action, both because they are unable to earn enough for housing and food, and also because of the conditions in which they work. Many workers are on a minimum wage or in insecure employment as public services have been privatised in order to deliver profits to shareholders.

During the Covid pandemic, however there was a cultural awakening about who ‘key workers’ are and what tasks needed to be done to keep everything working. Overnight, refuse collectors were judged to be more important than marketing consultants while health workers were literally applauded in the streets. At START, although NGOs are often expected to keep all costs to a minimum, staff are given as much financial security as can be managed and, alongside all other contributors – paid and unpaid – their ideas, concerns and aspirations are taken seriously. A non-hierarchical structure promotes ownership, job satisfaction and a sense of doing something worthwhile, however difficult the circumstances.

2.3.5. *Proposal 5: Public spending for state social protection*

Finally, the Charter calls for public spending to be directed at state social protection. One of the principles enshrined in the strengths approach is that change is possible: the government response to the war in Ukraine is a clear demonstration of it. Instead of seeking to control all aspects of entry and accommodation, the British public were supported to offer accommodation to people fleeing. Government money was made available to encourage speedy settlement and integration.

The impenetrable barriers to work, income security, health care, education for others seeking asylum were removed overnight. Over 100,000 Ukrainians have sought sanctuary in the UK through the Homes for Ukraine scheme, one of the fastest, biggest and most generous visa programmes in British history. This represents more than twice the number of people who have arrived in the UK through so-called ‘illegal’ routes. 1.1 billion British pounds was spent on the Homes for Ukraine schemes in contrast to the 1.5 billion for the asylum system and costs which could soar to £1.4 billion for the Rwanda offshore scheme.³⁴ The defensive waste of public money needs to be redirected to positive schemes with real investment in infrastructure such as health, education, public housing, efficient transport, food and water security.

Conclusion

Social workers must work within existing contexts and in the UK, as we have explained, the context is challenging and largely hostile to migrants. Even with this environment, it is possible to find ways of collaborating with migrants, upholding their human rights, striving for social justice and teaching future social workers how to work proactively with others. Refugees have been enabled to access their individual rights and entitlements in spite of numerous obstacles. Additionally legal precedents have been set and discriminatory institutional policies changed.³⁵ The commitment of social workers to working with and within such contexts is the focus of this paper. We have reflected critically on the UK’s Hostile Environment policy, the consequences of defensiveness for both society and the economy. In contrast we have proposed a positive, proactive approach to co-building a better, fairer and more sustainable world. Migration is a natural feature of human behaviour and populations. With the strengths approach, we can embrace the opportunities it brings.

³⁴ Refugee Council, “PM announcement on asylum seeker relocation to Rwanda: Refugee Council response” Refugee Council website 2022. <https://www.refugeecouncil.org.uk/latest/news/pm-announcement-on-asylum-seeker-relocation-to-rwanda-refugee-council-response/> [L. s. 24.2.2023].

³⁵ Bellinger and Ford, cf. Footnote 23, pages 52 and 50.

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HUMAN TRAFFICKING IN THE RUSSIA'S WAR ON UKRAINE

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Abstract

The recent war in Ukraine (openly started by the Russian Federation on February 24, 2022, and constituting an escalation of ongoing actions from 2014) once again showed that slavery did not disappear, it only took on a modern camouflage. The Internet has replaced the old slave markets, human traffickers have gone underground. But it is still one of the most lucrative practices practiced all over the world.

The International Organization for Migration (IOM) has recorded numerous cases of sexual violence against women and children trying to cross the border from Ukraine to Poland. Criminals take advantage of their victims by impersonating people offering transport or accommodation. La Strada International, the European platform of anti-trafficking NGOs, also states in its recent report that while it is too early to determine the scale of human trafficking related to the war in Ukraine, "there is already evidence of its activities."

The paper presents an analysis of the impact of Russian aggression on the migration of people from Ukraine and the threat of modern human trafficking.

Keywords: human trafficking, Ukraine, Russia, war.

Introduction

On the night of February 24, 2022 Russian President Vladimir Putin delivered a speech to the nation announcing the start of a special military operation aimed at protecting the population of Donbas from "genocide" and "demilitarization and denazification of Ukraine". The basis for the aggression was cited as the request for help from the separatist "republics" and the desire to defend the population that has been "victim of genocide by the Kiev regime for eight years." He announced the prosecution of those who committed "bloody crimes," also against Russian citizens.

In the early morning, the Russian Armed Forces began an attack on military infrastructure facilities throughout Ukraine and on border infrastructure from the territory of Russia and Belarus. The main motives of Russia's aggression against Ukraine were: (i) aspiration of taking over former Ruthenian lands; (ii) preventing from the existence of an independent Ukraine uninfluenced by Russia; and (iii) Russia's desire to destroy the European security architecture.¹ February 24, 2022 will undoubtedly make a strong mark in the history cards of the modern world.

The unprovoked, unjustified, and barbaric invasion of Russia into Ukraine is not only a manifestation of a huge security threat that has destroyed peace in Europe but also a challenge to the contemporary

¹ Grzebyk, P., Kuźniar, R., Bieńczyk-Missala, A., Kupiecki, R., Madej, M., Balcerowicz, B., Śledź, P., Pronińska, K., Jędrzejowska, K., Szeptycki, A. 2022. Agresja Rosji na Ukrainę - pierwsze dwa tygodnie wojny. Raport specjalny w: 10.7366/9788366849679.

world to face and confront Russia. The unprecedented concentration of Russian military troops along the border with Ukraine, the threats made by Russian Federation against Ukraine and NATO, and eventually the start of the invasion on February 24, 2022 significantly worsened Poland's security situation but nevertheless, Poland has been and remains a country that has provided Ukraine with the greatest aid. Poland is also among the countries that advocate for the widest possible scope of sanctions against Russia, including lobbying for the exclusion of Russian banks from the SWIFT system, and one of the first countries to make a decision to close its airspace to Russian aircrafts.

Having not achieved their original military goals, Russian armed forces use the tactics of attacking the civilian population. They carry out artillery shelling and bombing key infrastructure facilities, destroying airports, military units and warehouses, gas stations, schools, hospitals, and residential buildings. Deliberately violating international law, they provoke a humanitarian crisis and intensify sabotage operations on the routes of transportation convoys with military and humanitarian aid. Russia does not respect agreements regarding green corridors, designated for the evacuation of civilians and delivery of essential supplies to besieged communities. The number of casualties is increasing and the refugee crisis is deepening.

According to the Polish Border Guard data, from February 24, 2022 to January 22, 2023, 9.338 million Ukrainian refugees, mostly women and children, crossed the Polish-Ukrainian border.² The mass migration has already caused the largest humanitarian crisis in the world since the 1960s.³ The humanitarian crisis caused by the Russian war in Ukraine is rapidly turning into a human trafficking crisis, in which the women and children who make up the majority of refugees fleeing the war are exploited.

The work presents the history and definition of human trafficking and analyzes the impact of Russian aggression on migration from Ukraine and the threat of modern human trafficking.

1. The history of human trafficking

Human trafficking is a form of an illegal trade where people are forcibly kept, transported, or sold for the purpose of exploitation as workers or for forced sexual services. The history of human trafficking dates back to ancient times when people were sold as slaves.

In ancient Greece, slavery was a common phenomenon and in ancient Rome, it was one of the pillars of the economy of the empire. During the Middle Ages, it was widely prevalent, mainly in Arab countries. As Christianity gained influence in Europe, the phenomenon declined, however, when European countries began to build colonial empires, slavery became the driving force behind economic development.⁴

In the 19th century, human trafficking took the form of transporting African slaves to North and South America. During the over three centuries of the transatlantic slave trade, more than 12 million African slaves were transported to America.⁵

²StrażGraniczna

https://twitter.com/Straz_Graniczna/status/1617054749227995138?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cwtterm%5E1617054749227995138%7Ctwgr%5E607719298469e472063040546a5576d3a640a6f1%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.money.pl%2Fgospodarka%2Fukraincy-maja-placic-za-swoje-zakwaterowanie-organizacje-pozarzadowe-alarmuja-6858362874735168a.html [L.s. 24.01.2023].

³ The American research institute Pew Research Center created a list of the 10 biggest humanitarian crises in the last 60 years based on data from UNHCR and statistics from the UN's Department of Economic and Social Affairs. See: <https://www.pewresearch.org/fact-tank/2022/03/25/after-a-month-of-war-ukrainian-refugee-crisis-ranks-among-the-worlds-worst-in-recent-history/> [L.s. 24.01.2023].

⁴ Nowak, B., Współczesny handel ludźmi a nowożytny handel niewolnikami, [in:] Z. Lasocik (red.), *Handel ludźmi. Zapobieganie i ściganie*, Warszawa 2006, s. 33–34.

⁵ Lovejoy, P.E., *Transformations in Slavery: A History of Slavery in Africa*. Cambridge University Press. 2000.

After the slave trade ended, human trafficking took on new forms, such as smuggling people for forced labor or sexual crimes. In the 20th century, human trafficking became a global problem, especially in developing countries where people are smuggled into wealthier countries to work in difficult and dangerous conditions.

Contemporary cases of human trafficking include forced labor, forced marriages, sexual exploitation of children, organ trafficking, and the use of people for terrorist purposes. Global estimates of the number of human trafficking victims range from 24.9 million to 40.3 million men, women, and children.⁶

2. Human Trafficking, the definition

The issue of human trafficking has been raised internationally for a long time.⁷ Experts have been trying to formulate a definition of human trafficking for many years. The first legal definition of this crime is contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (hereinafter referred to as the Palermo Protocol), which supplemented the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations on November 15, 2000.

Under Article 3 of the Palermo Protocol, human trafficking means the recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power or of a position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (paragraph a). The necessary condition for criminal responsibility for the crime of human trafficking is the intention of the perpetrator (a deliberate action). The consent of the victim to the intended exploitation is irrelevant if one of the methods listed above was used (Article 3 paragraph b).

The Palermo Protocol calls for the criminalization of the attempt to commit human trafficking, participation as an accomplice in a crime considered prohibited, and organizing or directing other persons to commit the acts listed (Article 5). Supplementing the definition contained in Article 3 paragraph a of the Palermo Protocol is paragraph c of the same provision, which considers human trafficking to be: the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation, even if it does not involve any of the methods listed in point a.

When interpreting the definition presented, it should be remembered that the victim's consent to their exploitation in human trafficking does not matter if any of the methods of enslaving a person have been used. Article 3 indicates that human trafficking concerns various behaviors:

- exploitation in the erotic industry,
- exploitation for forced labor or services,
- slavery and practices similar to slavery,
- removal of human organs,
- prostitution and child pornography.

⁶ International Labour Organization 2017. Global Estimates of Modern Slavery: Forced Labour and Forced Marriage. Geneva: International Labour Organization.

⁷ The first international act that pertained entirely to human trafficking was the International Agreement of May 18, 1904, to combat the trafficking of white slaves, Journal of Laws of 1922, No. 87, item 783. Other documents included: The International Convention of May 4, 1910, to combat the trafficking of white slaves, Journal of Laws of 1922, No. 87, item 783; The International Convention of September 30, 1921, to combat the trafficking of women and children, Journal of Laws of 1925, No. 125, item 893; and the International Convention of October 11, 1933, to combat the trafficking of adult women, Journal of Laws of 1938, No. 7, item 37, amended by a Protocol approved by the General Assembly of the United Nations on October 20, 1947, Journal of Laws of 1951, No. 59, item 405; The Convention on the Suppression of Trafficking in Persons and Exploitation of Prostitution of December 2, 1949, opened for signature on March 21, 1950, in Lake Success, Journal of Laws of 1952, No. 41, item 278.

Human trafficking is characterized by the international movement of victims, that is, the transfer of victims from places where there is a "supply" of people interested in traveling away, mainly women and children, to places where there is a "demand" for certain services.⁸ In this crime, we are dealing with a kind of "geography of human trafficking," that is, the directions of human trafficking that pass through the territories of countries used by human traffickers - after the crisis caused by the war in Ukraine, Poland became such a state.

3. Consequences of Russia's aggression against Ukraine

The outbreak of war in Ukraine dramatically changed the migration situation in Central and Eastern Europe, especially in Poland. As a result of the war in Donbass, over 1 million residents of Ukraine left the country between 2014-2019, and many of them went to Poland. At the time, the Polish side was limited to providing ad-hoc and particular support to migrants. The war caused by Russia against Ukraine in February 2022 resulted in the largest refugee migration in Europe since World War II.⁹

The situation at the Polish-Ukrainian border gave rise to various criminal groups seeking quick profit by exploiting the dramatic situation of people fleeing military aggression and humanitarian disaster. The war background and the movement of large groups of refugees requires special attention to the problem of crime and counteracting pathological or inhumane treatment of people. In view of this special situation, children and women are most at risk, who can relatively easily become victims of human trafficking.

Human trafficking remains one of the most lucrative criminal activities in the EU. The estimated global annual profit of this trade is 29.4 billion euros. The victims are mostly women and children - people who dominate among refugees from Ukraine. In the years 2017-2018, almost three-quarters of all registered human trafficking victims in the EU were women and girls. They are most often the victims of human trafficking for sexual exploitation (over 90 percent).¹⁰

The victims of human trafficking are either unaware or aware of their fate. However, it should be emphasized that the majority of them are unaware of their future fate. The unaware victims of the traffickers are those people who have either been abducted for sale or misled as to the purpose of travel and the expected, promised destination reality. These are usually people who have decided to take paid work abroad, which has nothing to do with the criminal exploitation of man (e.g. women working as waitresses in a bar or nightclub).¹¹

It should be emphasized that traffickers "look for people in difficult situations - unemployed, troubled with different issues, in debt, single mothers with low incomes. The ideal victim for the perpetrator is a woman who does not ask where and why she should go and is so desperate that she accepts the offers of travel uncritically. The perpetrator mostly seeks for young and poor people."¹²

⁸ Lasocik, Z., „Handel ludźmi jako przestępstwo i naruszenie praw człowieka – wyzwania dla kryminologii”, *Archiwum Kryminologii*, (XXVIII), 2006, s. 233–253. doi: 10.7420/AK2005-2006P.

⁹ According to data from the Polish Border Guard, from February 24th to January 22nd, 2023, 9.338 million refugees from Ukraine, mainly women and children, crossed the Polish-Ukrainian border. See: https://twitter.com/Straz_Graniczna/status/1617054749227995138?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cwtterm%5E1617054749227995138%7Ctwgr%5E607719298469e472063040546a5576d3a640a6f1%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.money.pl%2Fgospodarka%2Fukraincy-maja-placic-za-swoje-zakwaterowanie-organizacje-pozarządowe-alarmuja-6858362874735168a.html [l.s.24.01.2023 r].

¹⁰ See: <https://www.consilium.europa.eu/en/eu-against-human-trafficking/> [l. s 25.01.2023].

¹¹ Antonów, R., *Handel ludźmi. Kierunki, metody i rodzaje zniewolenia ofiar*. *Annales Universitatis Mariae Curie-Skłodowska, sectio G (Ius)*, 2014, 61(1).

¹² Bryk, J., *Handel ludźmi – zagadnienia prawno-karne i kryminologiczne*, [in] *Tożsamość polskiego prawa karnego*, pod red. S. Pikulskiego, M. Romańczuk-Grąckiej, B. Orłowskiej-Zielińskiej, Olsztyn 2011, p. 244-245.

Most of the people fleeing from Ukraine are women, children and defenseless individuals who are ideal potential victims of criminal networks involved in human trafficking. According to IOM statistics, from April 12, 2022 to December 31, 2022, 96 percent of refugees were women.¹³

Although there are no official statistics yet, the International Organization for Migration (IOM) has recorded numerous cases of sexual violence against women and children attempting to cross the border from Ukraine to Poland. The perpetrators exploit their victims by posing as people offering transport or accommodation. In 2021 alone, IOM in Ukraine identified and provided assistance to over 1,000 victims of human trafficking. After the outbreak of war, when migrations of people significantly increased, the problem of human trafficking began to grow.¹⁴

La Strada International, a European platform of non-governmental organizations fighting against human trafficking, states in its report that although it is too early to determine the scale of human trafficking related to the war in Ukraine, "there are already evidence of its activity." From La Strada's research conducted from March to May 2022, it appears that the greatest danger is faced by children without care, people without documents, and people who may not have access to temporary protection offered in EU countries. And the risks may only increase as the war continues, as more and more people will be relocated, making access to services and sources of livelihood increasingly uncertain, while millions of refugees will have to settle in other European countries for a longer period and will need access to the labor market.¹⁵

The Europol (the EU law enforcement agency) has also received or identified indications of activity related to trafficking in refugees from Ukraine.¹⁶ Frontex (the European Border and Coast Guard Agency) warns of "criminals operating in this area (...) seeking to find victims among the refugees, mainly women and children," and reported an incident involving two third-country nationals who attempted to cross the border with two Ukrainian infants who had previously entered the country without children.¹⁷ National law enforcement agencies are also reporting "suspicious signals of behavior that may indicate human trafficking," such as a refugee offering sexual services and a number of registrations of individuals with a history of sexual exploitation who are interested in accepting refugees from Ukraine.¹⁸ Police forces in Romania and Moldova have reported serious suspicions that some refugees at the border have been recruited by human traffickers.¹⁹ The Polish Ministry of Internal Affairs has informed that the Polish prosecutor's office is investigating several potential cases of human trafficking and confirmed intelligence reports from the early days of the war, "when foreign individuals with probably bad intentions were detected at the border."²⁰ However, a representative of the Polish police did not confirm a formal police investigation.²¹

The number of human trafficking victims was growing even before Russia's aggression against Ukraine. According to the statistics of the Ministry of Internal Affairs and Administration, 447 victims were recorded in 2021, and 269 the year before. According to experts, the scale of this phenomenon is significantly larger. In the case of human trafficking, statistics always show the tip of the iceberg. It is

¹³ Poland – Ukraine Response 2022 – Crossing to Ukraine - End of Year Fact Sheet (12 April – 31 December 2022) <https://dtm.iom.int/reports/poland-ukraine-response-2022-crossing-ukraine-end-year-fact-sheet-12-april-31-december-2022?close=true> [l.s.24.01.2023 r].

¹⁴ Increased Risk of Trafficking in Persons for People Fleeing Ukraine <https://mailchi.mp/831d6be550d0/increased-risk-of-trafficking-in-persons-for-people-fleeing-ukraine?e=73001ddff6> [L.s. 30.01.2023].

¹⁵ Hoff, S., De Volder, E., Preventing human trafficking of refugees from Ukraine, A rapid assessment of risks and gaps in the anti-trafficking response https://freedomfund.org/wp-content/uploads/UkraineAntiTraffickingReport_2022_05_10.pdf [L.s. 30.01.2023].

¹⁶ Expertisecentrum Mensenhandel en Mensensmokkel (EMM), Mensenhandel en mensensmokkel van vluchtelingen uit Oekraïne: Strategisch Intelligence Beeld, 24 March 2022.

¹⁷ Frontex news release, Fabrice Leggeri: "We are concerned about human trafficking and gun smuggling", 6 April 2022, <https://frontex.europa.eu/media-centre/news/news-release/fabrice-leggeri-we-are-concerned-about-human-trafficking-and-gun-smuggling--ZU83Tk>; EMM, 24 March 2022. [L.s. 30.01.2023].

¹⁸ EMM, 24 March 2022, *ibid*.

¹⁹ *Ibid*.

²⁰ Polish Ministry of Interior, interview, 13 April 2022.

²¹ Polish national police, interview, 13 April 2022.

estimated that there are around 40 million victims worldwide, with about 100,000 being identified, which is about 0.25 percent. The problem of human trafficking in Poland and worldwide is very serious and no data even approaches its real scale. This is mainly due to the fact that the system of identifying victims and prosecuting perpetrators in Poland and worldwide remains ineffective.²²

Summary

The war in Ukraine once again showed that slavery has not disappeared over years, it has only taken on modern camouflage frameworks. The internet has replaced the old slave markets, and human traffickers have gone underground into criminal networks. But it is still one of the most lucrative operations worldwide.

The war caused massive destruction and displacement. The history of past conflicts and evidence emerging from Ukraine indicate that this war creates opportunities for human trafficking and exploitation of others. The war and displacement put people in desperate situations and there is a significant risk both for those who remain in Ukraine and for the millions of refugees forced to leave the country. When people are in danger and/or struggle to meet their basic needs, they may have no choice but to make risky decisions – even if they are aware of the associated risk. Unfortunately, the risk does not end when people cross the border from Ukraine, and transit and destination countries also play an important role in reducing the risk and protecting the population.

Currently, there is little reliable data on the nature and extent of human trafficking and exploitation related to the war in Ukraine. While it is largely seen as inevitable, the lack of such data may be seen as a warning of how crucial it is to study this operation, combat it, and thus protect migrating people.

²² Report Trafficking in human beings in Poland. Report 2021 (Source: <https://www.gov.pl/web/handel-ludzmi/handel-ludzmi-w-polsce-raport-2021>) and see: <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8535289,handel-ludzmi-dane-mswia-przesteczosc.html> [L.s.30.01.2023].

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10. Poland – Ukraine Response 2022 – Crossing to Ukraine - End of Year Fact Sheet (12 April – 31 December 2022) (<https://dtm.iom.int/reports/poland-ukraine-response-2022-crossing-ukraine-end-year-fact-sheet-12-april-31-december-2022?close=true>) [Last seen 24.01.2023];
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POST-PANDEMIC MIGRATION PROCESSES AND THEIR CHALLENGES FOR THE COUNTRY

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Abstract

Global migration manifests itself in many forms: economic migrants are forced to voluntarily leave their homeland in search of work, refugees are forced to leave their country as a result of conflict and violence. The source of migration processes today is technological, geopolitical, and climatic change.

With globalization and increased mobility, people have more opportunities to study and work around the world.

Migration processes have not bypassed Georgia either. In the case of Georgia, legal migration is determined by these three main reasons, although the emphasis is still on labor migration.

Migration can be an economic good, but it can also become a serious problem for the economic or political life of a country. The non-return of young people who have left the country for education, the "brain drain," and other important challenges for the country necessitate effective migration management.

Keywords Migration, globalization, circular migration, "brain drain".

Introduction.

Contemporary economic or military events have accelerated population migrations, slowing down somewhat the processes of the pandemic. About 281 million people, or 3.6 percent of the world's population, live outside their country.

Before the pandemic, the figure for 2019 was 272 million, or 3.5 percent. Of these, 135 million are female international migrants, or 3.5 percent of the world's female population (2019 - 130 million, or 3.4 percent), 146 million are male international migrants, or 3.7 percent of the world's male population (2019 - 141 million, or 3.6 percent), 169 million Labor migrants worldwide (2019 - 164 million), as of 2020, worldwide missing, 3900 migrants have died.¹

¹ World Migration Report 2022 <https://publications.iom.int/books/world-migration-report-2022> [L. s. 14.03.2023].

Key facts and figures from IOM reports 2000 and 2022

Table 1

	2000 წ	2022წ
Estimated number of international migrants in million	173	281
The share of international migrants in the world population	2,8%	3.6%
Share of female international migrants Calculation share	49.4%	48%
A country with high international migration	Emirates	Emirates
The number of labor migrants in million	-	169
Global international money transfers in million	128	702
Number of refugees	14	26.4
Number of internally displaced persons	21	55

The increase in migration processes is reflected in such an indicator as the number of remittances. As of 2020, international remittances of international migrants worldwide totaled \$702 billion. Events developed because of COVID-19 caused an actual decrease in remittances by 2.4% (719 million in 2019).

By 2020, \$540 billion in international remittances were sent to low- and middle-income countries, up from \$548 million in 2019.

1. Reasons for migration

Economic globalization, increased movement of people, as well as the development of transportation and technological changes have provided more opportunities for people to continue their education or find work around the world.

The search for work is the main driving force behind migrants. Labor migrants account for two-thirds of all international migration. For these people and their families, migration can bring significant benefits in terms of income, education, and health. For countries of origin, emigration can reduce unemployment and improve educational attainment, as migrant remittances provide financial flows and a source of stable income.

In the case of Georgia, global migration processes have the reasons mentioned above, although the main one is still labor migration.

As of January 1, 2022, Georgia's population was 3,688.6 thousand people, down 1.1 percent from the corresponding period of the previous year.

It should be noted that in 2021 there is a negative natural increase (-13,960) and a negative migration balance (-25,966).²

² Migration <https://www.geostat.ge/ka/modules/categories/322/migratsia>[L. s. 14.03.2023].

Components of population change, thousand

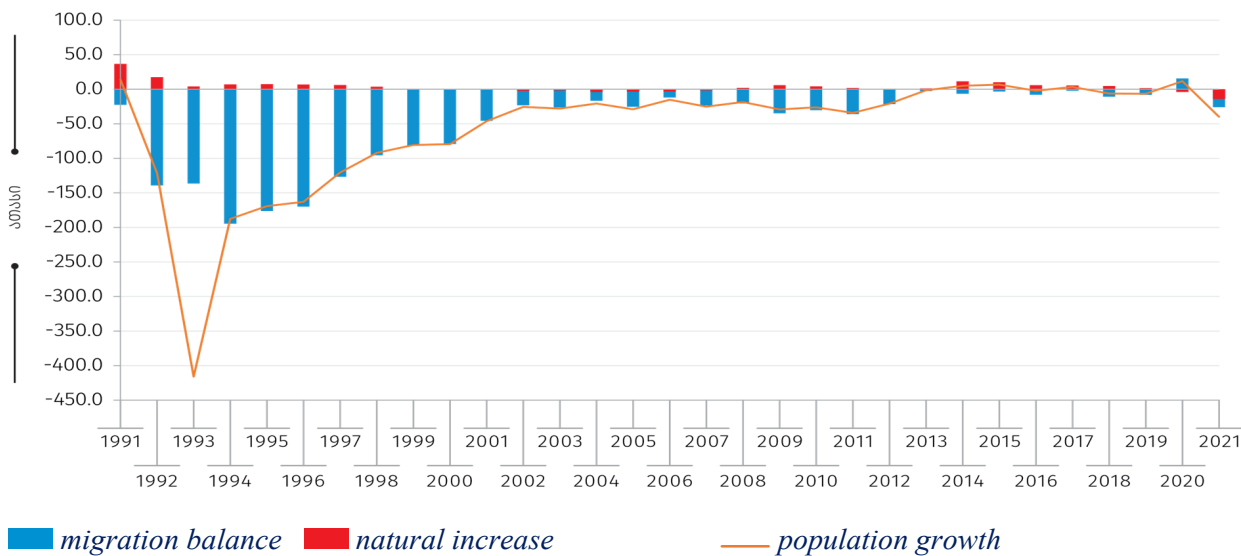


Fig. 1 Source: National Statistical Service of Georgia

As of January 1, 2022, 59.7 percent of Georgia's population lived in urban areas. In addition, St. Tbilisi's population is nearly one-third of the total population.

In 2021, the number of immigrants was 99,974, an increase of 34.6 percent over the previous year, while the number of emigrants decreased 17.8 percent to 74,008.

During the same period, 82.5 percent of immigrants and 88.6 percent of emigrants are of working age (age group 15-64).

Number of immigrants and emigrants in 2021 by main age groups

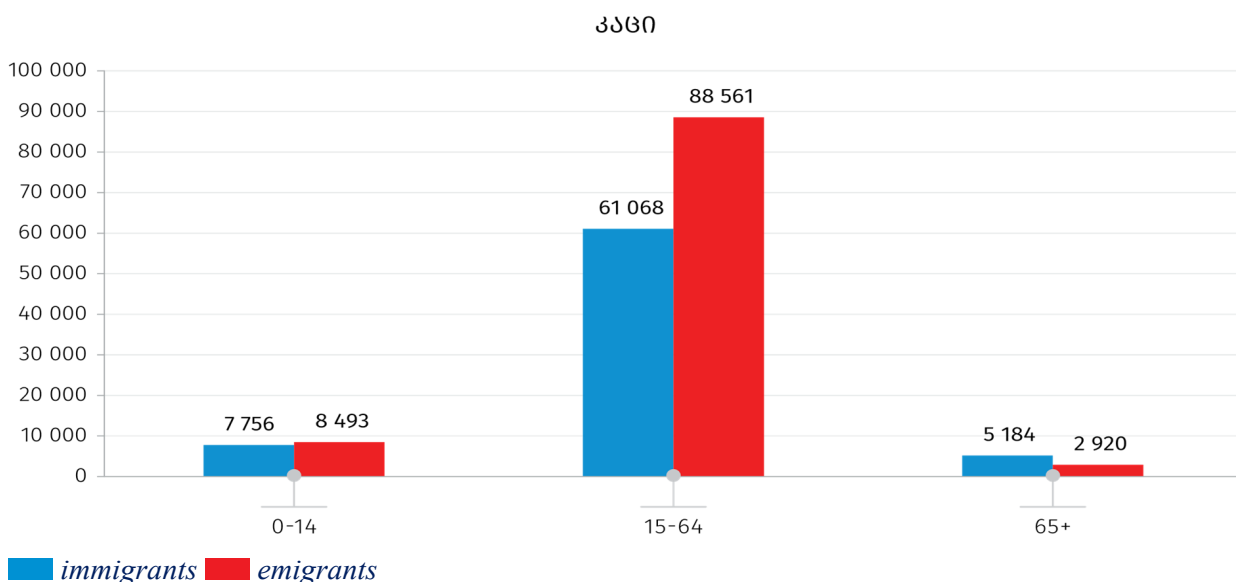


Fig. 2 Source: National Statistical Service of Georgia

In 2021, 53.4 percent of immigrants and 80.4 percent of emigrants are Georgia citizens.

Number of immigrants and emigrants in 2021 by citizenship
Table 2

citizenship	immigrants	emigrants
	all	74 008
Georgian citizen	39 526	80 351
A citizen of another country	34 433	19 568
Stateless / not specified	49	55

Fig. 2 Source: National Statistical Service of Georgia

After the start of martial law between Russia and Ukraine, the flow of people from Ukraine, Belarus and Russia to Georgia and not only to Georgia increased.

Its records are kept by the Ministry of Internal Affairs of Georgia and the National Statistical Service of Georgia. However, it is very difficult to identify these migration flows according to various criteria. We can only say that the number of incoming and outgoing visitors from these countries has increased.

Migration flows have their short-term effects, which are reflected in the exchange rate, rising prices of consumer goods, and rising real estate prices. These trends continue today.³

The development of circular migration schemes is important for the promotion of labor migration. It is a form of migration that is set up in such a way as to allow a certain degree of legal mobility between two countries. It is recognized as contributing to the economic growth of the labor supplying country and avoiding brain drain and other negative consequences.

2. Migration processes in the educational field

The growth of human capital is an absolute priority for our country and the only opportunity that will allow us to include Georgia among the countries with a developed economy.

European integration has significantly intensified migration processes in the aspect of education. If in 1993-2003 the population went abroad mainly for the purpose of employment, since 2004 the situation has changed somewhat and a significant part of emigrants (more than 50%) are young people, whose main motivation for leaving, along with employment, is primarily the desire to get education.

The European integration of Georgia's educational sphere and the creation of a single educational space promote student mobility, university cooperation in the implementation of educational programs and other effective projects.

³ Tourism or migration? https://idfi.ge/ge/tourism_or_migration_rate_of_stay_of_russian_citizens_in_georgia [L. s. 14.03.2023].

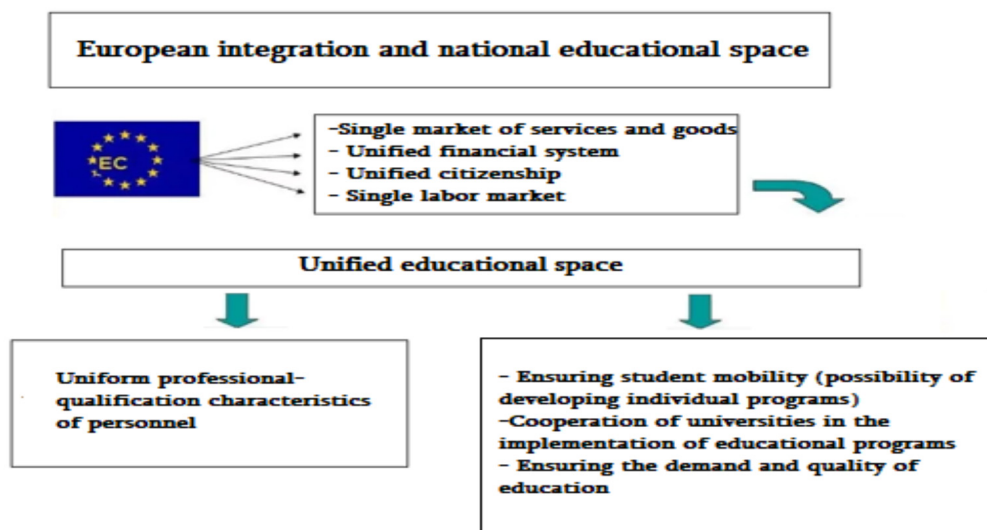


Fig. 3 Unified educational space

The economic, political and social benefits of educational migration for the country are obvious - the mobility of students and young scientists to foreign countries for higher, second higher and additional education or internships in universities and factories is a source of formation of qualified personnel in the country.

By the beginning of the 2021/2022 academic year, 484 students had been sent to study abroad, 195 more than in the previous year. The number of students sent from public universities is 2.4 times greater than the number of students sent from private universities.

The negative side of this process is the decision taken by a certain part of the students (even a small one) not to return after graduation for various reasons. On the one hand, this will reduce the population reproduction rate, which is already low from the demographic point of view, and on the other hand, from the economic point of view, the country will lose its highly educated human capital.

The number of immigrants to the country for education is increasing. In the academic year 2021-2022, 17,500 international students were enrolled in the country's universities (2019 - 14,617), an increase of 19.7 percent over the previous year. Of these, 4,892 are undergraduate students, while the rest are graduate, medical (veterinary) and residency students. As for the number of foreign doctoral students, according to the data of 2021, 33 students are studying in the country's universities. The bulk of the students (12) are Turkish citizens. A large number of students are Indian nationals.⁴

The basis for intensification of educational migration are scholarship programs operating in Georgia: for example: Stipendium Hungaricum in Hungary, academic programs in Italy, Fulbright program in the USA, Master programs in France, academic programs in San Diego. in the University, etc. It is also worth noting the cooperation in the framework of EU programs and scholarship programs of the International Education Center of the Ministry of Education, for example: Erasmus+; Erasmus Mundus Joint Master Degree.

In order to encourage scientific mobility, international business fellowship programs should be available to young scientists. This will increase the mobility both of foreign scientists for employment at Georgian enterprises and of Georgian scientists for medium-term secondment to conduct research at foreign companies.

⁴Short form migration profile https://migration.commission.ge/files/bmp_22_students_ge.pdf [L. s. 14.03.2023].

Number of residence permits by citizenship for foreign students⁵

	2017	2018	2019	2020	2021	sum
india	2,556	4,486	4,068	2,291	1,917	15,318
iran	145	326	607	456	440	1,974
Nigeria	253	268	321	316	475	1,633
offer	1,183	971	1,036	1,080	2,079	6,349
sum	4,137	6,051	6,032	4,143	4,911	25,274

In order to obtain positive results of educational migration, it is important to intensify exchange programs for student mobility in the country, to promote orderly, safe, legal, responsible migration. There is a need for state support in this direction.

3. Migration of private capital

In addition to labor and educational migration, the world's millionaires are characterized by migration processes. In this aspect, providing them with a favorable investment climate will be an important factor in economic growth.

After a two-year break due to the Covid-19 pandemic, the world's millionaires are beginning to migrate again. Experts predict that in 2023, the migration of private capital will reach a record pace: 125 thousand millionaires a year. On the main trends of migration of wealthy people over the last decade, as well as the forecasts for the future period Henley experts presented the Global Citizens Report.⁶

The question of trends in the migration of private capital and investment remains relevant not only for our country, but also for the whole world. And we are talking not only about wealthy investors and investment market professionals, but also about politicians. Their strategic tasks include, in particular, the development of effective investment programs that will contribute to economic growth and job creation.

The study covers 62 countries from 8 regions of the world and includes data on the travel and migration habits of more than 150,000 wealthy people. It is important to note that the migration of millionaires affected only those who moved and stayed in the country for more than six months. The target group of the study is people with assets of \$1 million or more.

According to this study, the world's wealth has grown from about \$150 trillion to \$500 trillion since 2000. At the same time, the number of high- and ultra-high-income people has increased. As of December 31, 2021, there were:

- ✓ More than 15.3 million people with more than \$1 million in assets,
- ✓ 593,340 people with more than \$10 million in assets,
- ✓ With more than \$100 million in assets - 26,670 people and
- ✓ Billionaires - 2,241 people.⁷

⁵ Short form migration profile https://migration.commission.ge/files/bmp_22_students_ge.pdf [L. s. 14.03.2023].

⁶ Global Citizens Report <https://www.henleyglobal.com/publications/henley-global-citizens-report/2022-q2> [L. s. 14.03.2023].

⁷ Global Citizens Report <https://www.henleyglobal.com/publications/henley-global-citizens-report/2022-q2> [L. s. 14.03.2023].

The global distribution of the world's richest people and private wealth at the end of 2021 is as follows (the personal wealth of all people living in the country, including all their assets minus any liabilities):

countries	\$ billion
USA	68,781
China	23,280
Japan	20,099
India	8,893
Germany	8,868
Great Britain	8,848
Australia	6,447
Canada	6,247
France	5,750
Italy	3,824

Source: Global Citizens Report Q2 2022

The growth of HNWI and UHNWIs in recent decades has been driven by the following circumstances:

Growing global GDP dynamics, reflected in rising global standards of living; The result of loose fiscal and monetary policies implemented to mitigate the economic effects caused by the 2008-2009 crises and the pandemic has been an increase in global savings, rising asset prices, which has helped increase the wealth of asset owners. Increasing life expectancy leads to an increase in savings, hence an increase in assets for investment.

The upward migration trend of HNWI continued even before the pandemic. Covid-19 made it difficult to accept information about migration processes. Projections for 2022 and 2023 show a rapid recovery in the rate of migration growth.



Figure 6 Number of wealthy people emigrating Henley & Partners, Global Citizens Report 2023

The increase in migration flows in 2016 was due to investment programs in Australia, the United States, Canada, and New Zealand. They contributed to the inflow of millionaires to these countries

Wealthy people often move their businesses to another country along with their jobs, workforce skills, qualifications, and influence. This is why it is especially important now that countries reconsider their migration policies. Only in this way can host countries take full advantage of attracting new talent.

In order to obtain effective results by increasing migration flows, the issues of state management of migration processes become relevant.

The acceleration of the rapprochement process with the European Union gave a significant impetus to the development of the migration management system in Georgia. During this period, migration strategies for 2013-2015 and 2016-2020 were developed with the aim of creating, improving and increasing the efficiency of the management system.⁸

In 2010, the Government Commission on Migration was formed, which brought together all the important participants in the migration process and organized its activities at the state level.⁹

As a result of innovations and changes in the field of migration new challenges have emerged. That is why a migration strategy was developed for 2021-2030, which aims to meet the challenges in the field of migration in accordance with the new realities.

The strategy involves highlighting the country's interests in migration and discussing them in terms of "migration and development" policies. It also seeks to relate to successful international experience and develop its own system.

The strategy is based on the principle of "migration and development," which serves to minimize the negative effects of migration and increase the positive effects.

Conclusion

Migration is important for economic prosperity, human development and security, and safer and better regulated migration has become a global priority.

Improving migration management, promoting legal migration and combating illegal migration, reintegration of returnees, diaspora involvement, asylum system and integration are the highest priorities of migration processes in Georgia.

It is necessary to regulate and control the activity of intermediaries who are engaged in employment abroad. This will help protect the rights of labor immigrants, as well as enhance the work of reliable employment agencies in this area.

Development of temporary (circular) labor migration schemes. This will help bring migration into a legal framework, take into account the interests of countries of origin and destination, as well as the migrant workers themselves, and, most importantly, facilitate their return home.

Despite the abundance of information provided to citizens, raising public awareness of legal migration opportunities and the dangers associated with irregular migration is a national challenge.

For the further development of the country it is important to promote international mobility in the field of higher education and science, which will increase the flow of Georgian students and scientists to educational institutions in foreign countries, as well as the growth of foreign-language educational institutions in the country. The basis for this will be the activation of scholarship, academic and master's programs implemented by the Ministry of Education together with international partners.

The introduction of foreign-language educational programs in Georgian higher educational institutions will increase the mobility of foreign students in the educational space of Georgia.

International students contribute significantly both to the country's economy and to the development of universities. The tuition they pay allows Georgian universities to invest heavily in infrastructure and technology and to develop new educational programs.

⁸Migration strategy of Georgia for 2016-2020 https://migration.commission.ge/files/migration_strategy_2016-2020_geo_final_-_amended.pdf [L. s. 14.03.2023].

⁹ Migration strategy of Georgia for 2021-2030 https://migration.commission.ge/files/ms_2021-2030_geo.pdf [L. s. 14.03.2023].

The question of trends in the migration of private capital and investment remains relevant not only for our country, but also for the whole world. And we are talking not only about wealthy investors and investment market professionals, but also about politicians. Developing and offering them effective investment programs will contribute to economic growth and job creation in the country.

It is necessary to support the reintegration of returned migrants into the local labor market.

Cooperation between the central government and local governments is becoming increasingly important in improving migration management. Municipalities have more information about different groups of migrants and their needs.

It is necessary to increase the involvement of municipalities with regard to legal migration, as well as issues of return and reintegration, providing information on the state of migration and other projects to potential migrants.

In order to solve migration problems, it is important for Georgia to participate intensively in global or regional international processes and platforms. It is necessary to exchange global best practices in migration management, take into account their experience in solving migration problems. It is also important to bring the Georgian vision of migration issues to international events and popularize it.

Migration and other forms of cross-border mobility are issues of high policy importance. Demands for statistics in these areas have further increased in light of the 2030 Agenda for Sustainable Development and the 2018 Global Compact for Safe, Orderly and Regular Migration. The statistical community continues to be challenged to capture international migration and cross-border mobility in a way that would meet the growing needs of users.

It is clear that no country can cope with migration problems alone. Transnational problems require transnational solutions. Migration is global, requiring global approaches and global solutions.

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THE EUROPEAN LABOUR MARKET IN THE WAKE OF THE NEW REFUGEE CRISIS

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Abstract

Russia's aggression against Ukraine has led to a humanitarian crisis in Europe unprecedented since the Second World War. After nearly a year, more than 8 million Ukrainian refugees were recorded in Europe, of whom more than 4.8 million were registered under the EU's Temporary Protection Directive (TPD) or similar national protection programmes. The study provides an empirical characteristics of the scale and structure of the refugee wave from Ukraine. Placing a strong emphasis on highlighting the differences with respect to previous crises of this type, the study reveals the scale of the challenges facing European institutions in the face of such an unprecedented humanitarian catastrophe. The objective is also to highlight the need for different priorities and new strategies for integration policies in the European labour market.

Keywords: refugees, labour market, integration policy, Ukraine.

Introduction

Over the past decade, Europe has faced an unprecedented scale of influxes of economic migrants and refugees. As a result of the global economic crisis, climate change, political unrest and, increasingly, war, thousands of people are forced to leave their previous place of residence every day in search of safety. According to UNHCR's annual Global Trends report, the number of people displaced by war, violence, persecution and human rights violations reached 89.3 million in 2021.¹ From a European perspective, however, the situation only gained a shockingly human dimension with Russia's invasion of Ukraine on 24 February 2022. The war, which has been ongoing for almost a year, has triggered a refugee wave on a scale not seen in Europe since the Second World War and has contributed to the number of forcibly displaced people rising to over 100 million by 2022. Worse still, the prospect of prolonged warfare and escalating attacks on civilian infrastructure may force more victims in the coming months to seek refuge in neighbouring countries, but also in more distant European states. In such a situation, how will Europe cope in the long term politically, economically, socially and, perhaps above all, morally? Has the European Union learnt its lesson from the 2015 migration crisis, when member states were plunged into strife in the face of accepting 1.2 million refugees seeking shelter from wars in the Middle East? Will Europe's politicians and opinion leaders get a humanitarian response to inhuman cynicism this time?

Analysing the humanitarian catastrophe represented by the new wave of refugees, the following paper will attempt a multi-faceted interpretation of the interrelated factors affecting refugee integration, particularly in the context of the European labour market. The first part of the paper will review the literature on European integration policy and the impact of refugees on the labour market. The second part of the paper presents an empirical characteristic of the refugee wave from Ukraine highlighting its significant difference from previous crises of this type. The paper concludes with a presentation of the most relevant challenges facing European institutions and recommendations for refugee integration strategies from a labour market perspective.

¹ UNHCR, Global Trends: Forced Displacement in 2021, 16.06.2022, p. 5.

1. Literature review

In recent decades, the intense wave of economic and refugee migration to Europe has been the source of a number of socio-economic problems and, consequently, of much academic debate. In particular, the influx of refugees to Europe has contributed to many interpretations of the effects this process has on the social policies of European countries. The large number of studies devoted to this topic and the variety of often extreme opinions and assessments of the effects of migration expressed in them demonstrate the complexity of the issue under analysis. The source of most of the discrepancies lies not only in the complicated methodology for studying the effects of migration on the economy, but also in its much deeper and staggered impact on the socio-economic structure of individual countries. Political, cultural and religious factors strongly influencing the final assessment of the consequences of the influx of migrants and refugees to Europe are also not insignificant.

The socio-economic impact of the influx of refugees into Europe is measurable through various, often interdependent, transmission channels. Among the consequences of this process are changes in budget expenditures and revenues, an increase in aggregate demand entailing changes in the prices of goods and services, an increase in innovation potential, the creation of new streams of international trade and the risk of increased social conflicts on ethnic, cultural and religious grounds. However, the most obvious effect of the phenomenon under study from the perspective of economic mechanisms is the increase in labour supply translating into turbulence in the labour market.

The mechanism of the labour market predicts that with the influx of refugees resulting in an increase in labour supply, the wages of existing workers will change unevenly. The determining factor here is primarily the level of qualification on the part of both refugees and the native labour force. Detailed empirical analysis shows that the influx of refugees does not significantly increase the level of unemployment, but that the part of the local labour force characterised by a low level of qualification faces increased difficulties in finding work and the risk of a reduction in wages for the work previously performed.²

Empirical research on refugees' living conditions and their chances of integrating into the labour market shows that they have less favourable conditions when competing with economic migrants. Refugees are 11.6 percent less likely to find employment and 22 percent more likely to join the ranks of the unemployed than economic migrants.³ Similarly, the level of their incomes is unfavourable - statistically it is significantly lower, which is often due to their desperation and willingness to work in poor conditions, often illegally.⁴ The position of refugees vis-à-vis economic migrants, from a statistical point of view, is improving after a decade and a narrowing of the gap between these groups can be observed, but this is more evident in employment rates than in wages.⁵ The catalyst for such progress is the promotion of joining the labour force as soon as possible, the integration at school level of refugee minors and access to social assistance⁶

The health status and self-assessment of the mental health of refugees is also not insignificant, especially in the context of refugees from Ukraine, who have experienced a humanitarian catastrophe unimaginable to many Europeans. Studies on the subject show a significant correlation between traumatic experiences prior to fleeing their own country and European integration policies, as well as mental well-being and, as a result, the ability to work in the host country.⁷

Equally important information is provided by research showing the lower professional activity of refugee women in relation to male refugees. This is crucial in view of the influx of a new refugee wave from Ukraine. While in the years preceding the Russian aggression against Ukraine, men dominated the

² Borjas, G. J., *Immigration Economics*, Harvard University Press, 2014, pp. 79-104.

³ Fasani, F., Frattini, T., Minale, L., (The Struggle for) Refugee integration into the labour market: evidence from Europe, *Journal of Economic Geography*, Volume 22, Issue 2, 2022, pp. 351–393.

⁴ Akgüç, M., Welter-Médée, C., Linking migration reasons and origins to labour market outcomes: recent evidence from Europe, *Economics and Statistics*, No. 524–525, 2021, p 109.

⁵ Brell, C., Dustmann, C., and Preston, I., The labor market integration of refugee migrants in high-income countries. *Journal of Economic Perspective*, Volume 37, No. 1, 2020, pp. 94–121.

⁶ Andersson Joona, P., Gupta, N. D., Labour market integration of FRY refugees in Sweden vs. Denmark, *International Migration*, 2022, p. 11.

⁷ Ambrosetti, E., Dietrich, H., Kosyakova, Y., Patzina, A., The impact of pre- and postarrival mechanisms on self-rated health and life satisfaction among refugees in Germany, *Front. Sociol.*, 2021, pp. 12-14.

refugee population, accounting for 59% of the total,⁸ in the current situation, up to 90% are women with children.⁹ Meanwhile, available studies show that refugee women are about 30 percentage points less likely to be professionally active than male refugees.¹⁰

Significantly important from the perspective of decisions taken at the political level is the attitude of Europeans towards refugees arriving on the continent, which, in addition to pre-existing cultural backgrounds, is largely created by the media. With the development of technology, it is not only the mainstream media that deserves attention, but also, and perhaps especially, the so-called social media, which are often fertile ground for xenophobic or even racist attitudes. Few studies in this area show a favourable shift in public opinion towards the discussed phenomenon. Statistics from 16 countries based on the European Social Survey show a significant increase in support for the acceptance of refugees between 2002 and 2014.¹¹

The above literature review demonstrates the existence of barriers, typical for most refugees and often cumulative, which in effect prevent rapid integration into the labour market. The variety of reasons for low labour market participation, often due to experienced trauma, bureaucracy, discrimination on the basis of gender, religion, ethnicity, lack of education or knowledge of the local language, results in a significant proportion of refugees remaining unemployed for long periods of time or taking up employment in the informal economy or in occupations below their qualifications. Nevertheless, the studies cited show that over time, refugees are adapting to European labour market realities and, by acquiring new qualifications, are able to compete with economic migrants and often with the local population. In addition, there is a consensus among researchers on this issue that improving the integration process requires the effective identification and implementation of key elements of active labour market policies (ALMPs),¹² the tenets of which will be discussed in relation to Ukrainian refugees in the penultimate section of this paper.

2. Characteristics of the refugee wave from Ukraine

Since Russia's invasion of Ukraine, more than 8 million Ukrainian refugees have been recorded in Europe, of whom more than 4.8 million have been registered under the EU's Temporary Protection Directive (TPD) or similar national protection programmes.¹³ Such a large refugee wave poses a serious challenge for the socio-economic policies of individual European countries, especially in the area of the labour market. The challenge is all the greater as the number of registered refugees varies drastically from one region of Europe to another. As Figure 1 illustrates, by far the largest number of refugees has been registered in Poland (over 1.5 million), Germany (880,000) and the Czech Republic (485,000). In the initial stage of the crisis, the largest number of refugees reached the countries neighbouring Ukraine, but as time passed, a phenomenon of secondary migration was recorded, aimed at countries much more distant geographically. Another potential problem of the observed refugee wave is its unprecedented dynamics.

⁸ OECD, How are refugees faring on the labour market in Europe? Working Paper 1/2016, p. 5.

⁹ UN Women, The Rapid Gender Analysis of Ukraine: Secondary Data Review, Kyiv, 29.03.2022, p. 6.

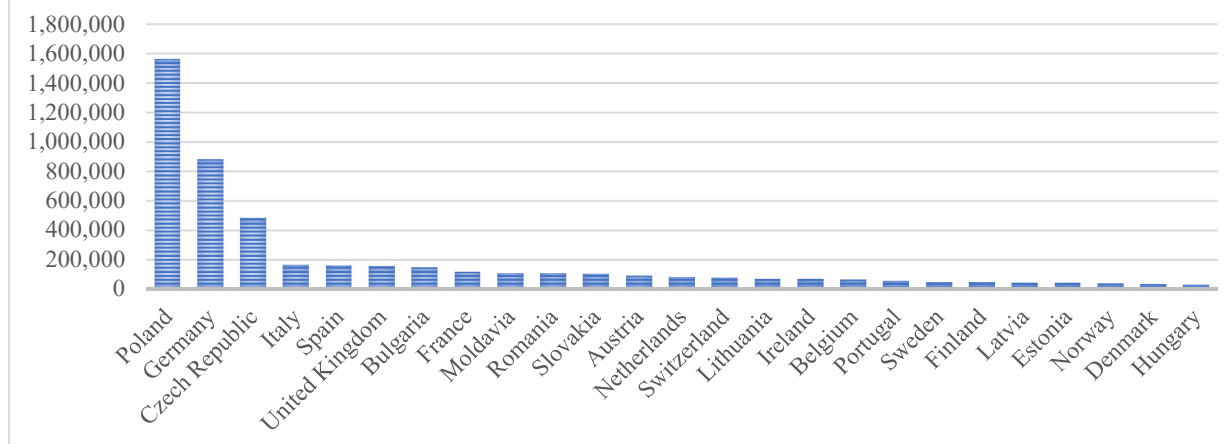
¹⁰ Salikutluk, Z., Menke, K., Gendered integration? How recently arrived male and female refugees fare on the German labour market, *Journal of Family Research*, Volume 33, No. 2, 2021, p. 302.

¹¹ Abdelaaty, L., Steele, L. G., Explaining attitudes toward refugees and immigrants in Europe, *Political Studies*, 2020, p. 24.

¹² Card D, Kluve J, Weber A., What works? A meta-analysis of recent active labour market program evaluations, *Journal of the European Economic Association*, Volume 16, Issue 3, 2018, pp. 894–931.

¹³ UNHCR, Ukraine Refugee Situation, available online: <https://data.unhcr.org/en/situations/ukraine>, [L.s. 31.01.2023].

FIGURE 1
 NUMBER OF REGISTERED REFUGEES FROM UKRAINE IN SELECTED
 EUROPEAN COUNTRIES UNDER THE EU TEMPORARY PROTECTION
 DIRECTIVE (TPD) OR SIMILAR NATIONAL PROGRAMME
 (FROM 24.02.2022 TO 31.01.2023)



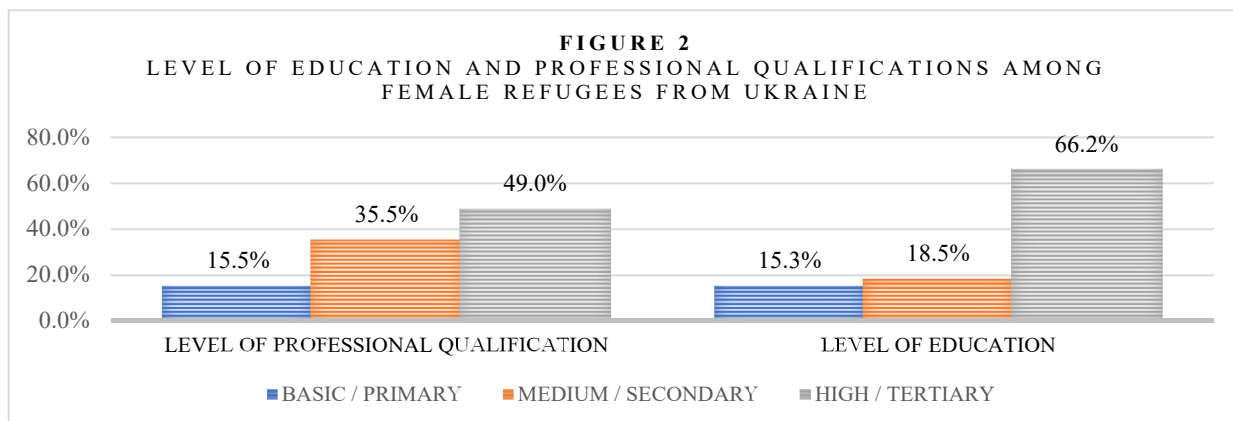
Source: own compilation based on UNHCR data.

Its scale is illustrated by comparing statistics from two similar periods in 2021 and immediately after the outbreak of war. In the first half of 2021, more than 55,000 refugees and migrants were registered in Europe,¹⁴ and from 24 February to 26 July 2022, more than 6 million refugees were recorded from Ukraine alone. Despite Europe's unfavourable demographics and the resulting labour shortages in many of its regions, such a large and unexpected number of refugees will continue to pose a staggered problem for local labour markets over many months, and possibly years.

In addition to its scale and dynamics, the current refugee crisis also differs from those observed in previous decades in a number of other aspects, among which are the gender, education and age of refugees, previous professional activity, as well as their willingness to work and settle in the host country. As mentioned above, 90 per cent of refugees from Ukraine are women with children and often post-working age people. The reason for this is the decree of the President of Ukraine banning men aged 18-60 from leaving the country. Such a preponderance of women in the refugee wave from Ukraine raises another challenge for European integration policy. Research over the past decades shows that the employment rate of refugee women in Europe was only 45%, 17% lower than that of male refugees. Similarly, the participation rate of refugee women relative to male refugees was significantly lower at 57% and 77% respectively, translating into high unemployment among refugee women of around 21% in previous years.¹⁵ Adding to the burden of taking up employment is the fact that a significant proportion of refugee women currently care for children and elderly immediate family members alone. This phenomenon, known as enforced single motherhood, often puts them at risk of being victims of sexual crime and exploitation in informal work. This gloomy picture emerging from the above data is mitigated somewhat by the level of education and qualifications possessed among Ukrainian women seeking refuge in Europe.

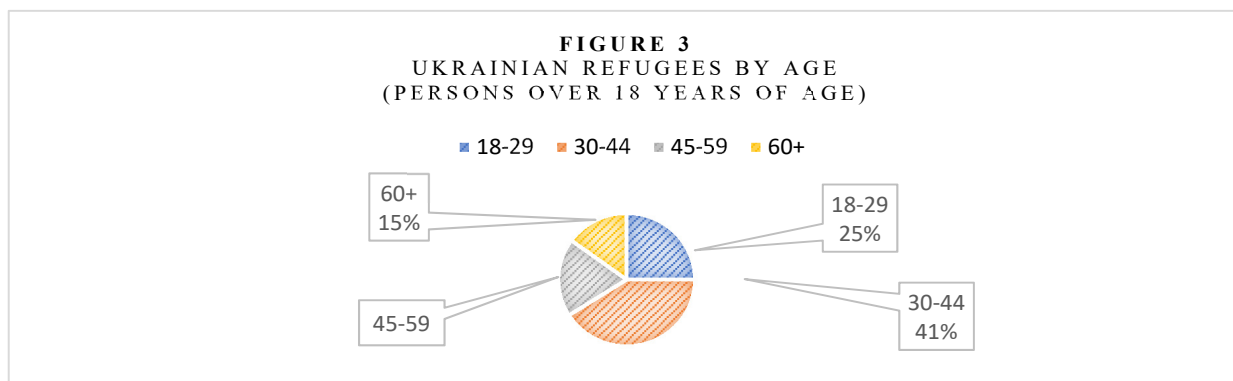
¹⁴ UNICEF, *Refugee and migrant crisis in Europe*, Revision 1, 2021, p. 11.

¹⁵ OECD, *How are refugees faring...*, op. cit., p. 19.



Source: own compilation based on International Labour Organisation data.

As Figure 2 illustrates, refugee women are dominated by a high proportion of those with higher education (66%) and a previously highly qualified profession (49%).¹⁶ In contrast, the education rate for Ukrainian citizens as a whole is only 30%. An additional source of optimism is the fact that in the years prior to the current crisis, only 20% of refugees arriving in Europe had a university degree. The juxtaposition of the above data, on the one hand, may give refugee women hope of quickly finding regular high-paid work, while on the other hand, the realities of the European market may force them to take up work in sectors offering low wages in relation to the presented qualifications. A significant problem in the case of refugees with such a high level of education may additionally be the problem with the recognition of diplomas or the inability of a potential employer to verify the declared competences. A similarly important role as the gender and education of refugees is played by their age. As illustrated in Figure 3, data collected among refugees arriving in Poland, which received the highest number of them, shows that the largest group are persons in the age of the highest economic activity. For comparison, in the structure of labour immigration in previous years, as many as 2/3 were men, of which 3/4 were under 45 years of age.¹⁷



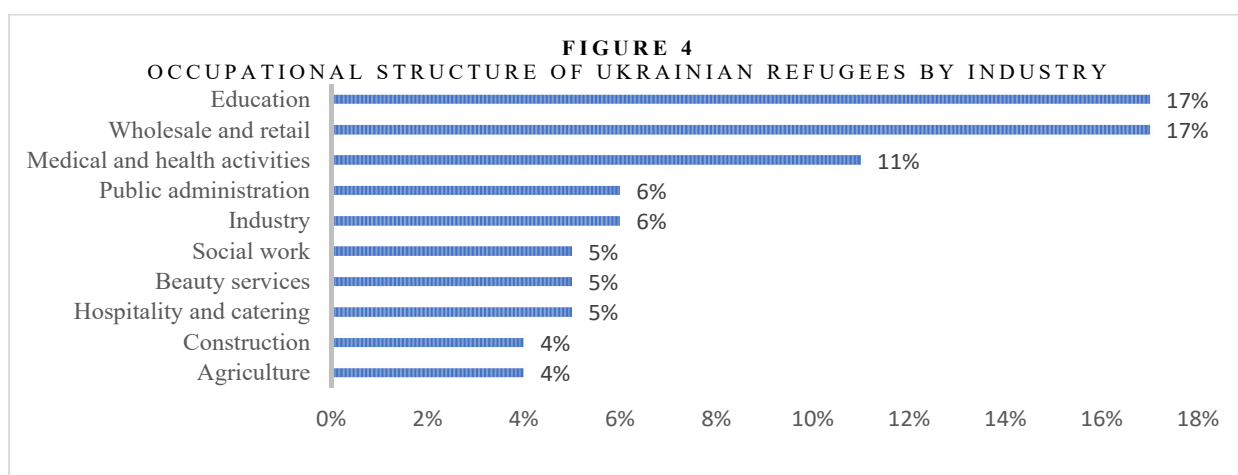
Source: own compilation based on data from the National Bank of Poland.

An additional factor increasing the chances of rapid assimilation into the European labour market is the high rate of refugee professional activity prior to the outbreak of war. According to a survey conducted by UNHCR, as many as 76% of refugees were previously employed (Figure 4), with nearly half of them in the education, trade and health care sectors.¹⁸

¹⁶ ILO, The impact of the Ukraine crisis on the world of work: initial assessment, Geneva, 11.05.2022, p. 10.

¹⁷ Łątkowski, W., Wszyński, R., Polski rynek pracy w obliczu fali uchodźczej z Ukrainy, Obserwator Finansowy, No. 5, Warsaw, 2022, p. 19.

¹⁸ UNHCR, Lives on hold: Intentions and perspectives of refugees from Ukraine, 2022, p. 11.



Source: own compilation based on UNHCR data.

The last characteristic of the described refugee wave, whose impact on the European labour market cannot be underestimated, is their willingness to settle in the host country and the refugees' readiness to work. Despite the high uncertainty of the collected data resulting mainly from declarations for the purpose of surveys, in most host countries, most Ukrainian refugees express their intention to return to their own country as soon as possible. Willingness to stay in the host country for longer than the duration of the war is declared by a slightly different percentage of refugees depending on the host country. This is probably due to the existential conditions, the integration policy and the perspectives for the future that the individual countries have offered. For example, the results of the report "Refugees from Ukraine in Poland", carried out by the Foundation for the Support of Migrants on the Labour Market "EWL", show that as many as 56% of the refugees surveyed plan to return to Ukraine as soon as possible, while the willingness to stay in Poland permanently was expressed by only 7% of the people.¹⁹ The percentage of respondents declaring a willingness to work in countries that have received refugees is equally high. Data collected among Ukrainian refugees in Germany shows that only 10% of respondents have no possibility or willingness to take up a job, while 16% rate their chances of finding a job as low. The remaining 74% of respondents declared that they have already found, or are looking for, a job in their profession (42%), or are already working, or are willing to work, in an occupation below their qualifications (32%).²⁰

The above characteristics reveal the nature of a refugee wave that breaks from previous, often stereotypical, perceptions of refugees from countries at war. In the case of refugees from Ukraine, Europe is facing a phenomenon of unprecedented magnitude in recent decades, but the potential of highly educated and skilled people could provide a significant boost to a continent struggling with a serious demographic crisis. Also, the first studies collected show an optimistic outlook for the integration of refugees from Ukraine, and their entry into local labour markets has been much faster than in previous refugee waves.²¹

3. Recommendations for integration measures in the European labour market

The refugee crises of the past decades have confronted the institutions responsible for the integration of refugees with the dilemma of choosing between 'work-first' and 'human capital' policies. The former systemic solution boiled down to depriving refugees of social benefits as quickly as possible and thus forcing them to look for any kind of employment. Even in the case of low qualifications and lack of relevant education, which was mostly the case in the earlier waves of refugees, this system allowed for the necessary retraining of the employed worker in the new workplace, thus quickly increasing their productivity. Human capital policy, on the other hand, mainly consists of offering job-seeking refugees an often lengthy training system, from learning the local language to specific courses required for certain

¹⁹ Foundation for the Support of Migrants on the Labour Market „EWL”, Uchodźcy z Ukrainy w Polsce, 2022, p. 10.

²⁰ Panchenko, T., Prospects for Integration of Ukrainian Refugees into the German Labor Market: Results of the ifo Online Survey, CESifo Forum, Volume 23, Issue 4, 2022, p. 73.

²¹ OECD, What we know about the skills and early labour market outcomes of refugees from Ukraine, 2023, p. 9.

professions. The disadvantage of this solution is that, on the one hand, it prolongs the time refugees undergoing training remain unemployed and, on the other hand, by increasing their competences, it exposes them to a lack of jobs corresponding to their acquired qualifications and higher salary expectations.²² With the above in mind, the question arises about the selection of effective elements of previously applied strategies to effectively support the integration of Ukrainian refugees into the European labour market.

Taking into account the characteristics of the Ukrainian refugee wave described in the previous part of this study, Europe is currently facing the challenge of choosing between assimilating Ukrainian refugees into the labour market as quickly and smoothly as possible, or providing them with employment in a profession corresponding to their relatively high skills. The choice of the first solution is intuitive insofar as, on the one hand, it allows for the rapid provision of means of self-support and, on the other, it relieves the host countries of the burden of maintaining hundreds of thousands of potential beneficiaries of various welfare payments. This solution, however, carries the risk of pushing financially disadvantaged refugees, mostly well-educated single women caring for children, into sectors typical of the informal economy, such as hospitality, commerce, agriculture or household services.²³ In addition, this group requires above-average protection and support, as they are most vulnerable to the stress and trauma of being separated from their families and experiencing the horrors of war, and to the risk of violence and sexual exploitation. Europe, faced with a humanitarian crisis of this magnitude, being itself the cradle of human rights, cannot afford such ambivalence, and not only for moral reasons. The demographic crisis, which is increasingly making itself felt in many regions of the continent, means that Europe cannot waste the potential of educated refugees to provide an opportunity to keep its economy innovative and competitive. The experience to date with the integration of Ukrainian refugees and research conducted over the past 30 years also shows that any form of work restrictions on newly-arrived refugees has a disastrous effect not only on those concerned to enter the local labour market quickly, but also on the economies of host countries. Various estimates indicate that the restrictions on refugees taking up work enforced in previous years reduced their labour force participation by 15% and contributed to a production loss of €37.6 billion.²⁴ This is why the Temporary Protection Directive, which guarantees immediate and temporary protection for displaced persons from third countries in the event that the current asylum system is unable to cope with the massive influx of refugees, was an important and prudent step on the part of the European Union.²⁵

The experience so far of European countries in the integration process of Ukrainian refugees shows that there are still many challenges that require urgent intervention. Some of the main problems include: the low availability of care institutions, the difficult process of recognising professional qualifications, the lack of affordable decent accommodation and the insufficient availability of training, especially in learning the local language. In addition, given that the vast majority of refugees are women who are single caring for children and elderly immediate family members, integration policies of host countries should include subsidised childcare and assistance in caring for the elderly. However, the biggest challenge, which cannot be solved in the short term, is the structural mismatch between labour supply and demand, due to the fact that jobs are mostly sought by highly educated refugee women, while the sectors in which workers are sought offer employment requiring relatively low qualifications and the ability to perform physical work.

Summary

The specifics of the current refugee crisis in Europe, triggered by Russia's aggression against Ukraine, differ in many ways from previously described phenomena of this kind. Today's refugee wave has little

²² Arendt, J., Labor market effects of a work-first policy for refugees, *Journal of Population Economics*, 2020, p. 171.

²³ Instytut Prognoz i Analiz Gospodarczych, *Szara Strefa 2022*, 2022, Warsaw, p. 17.

²⁴ Fasani, F., Frattini, T., Minale, L., Lift the Ban? Initial Employment Restrictions and Refugee Labour Market Outcomes, IZA Discussion Paper No. 13149, 2020, p. 37.

²⁵ Council of the European Union, European Union Council Directives 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, *Official Journal of the European Union*, Article 2a, 2001, p. 164.

in common with the stereotypical image of refugees from war-torn countries seeking refuge in Europe. The majority of Ukrainian refugees are women, the vast majority of whom are of working age, highly skilled and previously professionally active. Importantly, the vast majority of refugees interviewed in various surveys declare a willingness to work, but their willingness to settle permanently in the host country is relatively low. In the face of such a major change, Europe must seek new solutions for the effective integration of refugees into the labour market. Effective enough to simultaneously guarantee rapid integration into the labour force with the need to secure permanent employment in sectors corresponding to their high qualifications. This daunting challenge necessitates a departure from the relatively restrictive approaches of the past and a search for more liberal solutions to support the rapid social and economic integration of refugees. Lessons learnt from previous refugee crises indicate that the most pragmatic alternative is to provide refugees with conditions for effective post-traumatic recovery combined with a simultaneous system of counselling and training to enable rapid adaptation to the new realities of the labour market. However, the efforts made so far have been of a temporary nature in many countries and, with stagflation looming on the horizon, many countries have decided to cut back on existing benefits for the assimilation of refugees. This complex and costly process can only be achieved if Europe proves that it is still the cradle of liberal democracy with a strong commitment to values such as tolerance and solidarity.

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CIRCULAR LABOR MIGRATION AND GEORGIA: EXPERIENCES AND CHALLENGES

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Abstract

The given article will discuss the theoretical and practical issues related to the experience that has been accumulated and implemented in Georgia in the direction of circular labor migration.

We will try to understand and evaluate the history of migration process passed by Georgia and its results, which we have received since the dissolution of the Soviet Union and the restoration of Georgia's independence to the present day.

We will show you how the heavy memory related to migration processes affects modernity and the formation of psychotypes of labor migrants; We will talk about the differences between perceptions, expectations, working environment and conditions; What positive and negative results are expected and characteristic of similar, overseas employment systems; What changes and opportunities did visa liberalization create for the Georgian labor market; What preventive measures exist for the proper functioning of circular labor schemes; What are the examples of labor migration experience gained by different countries of the world. What risks and challenges are expected in the future in terms of labor migration in Georgia and what legal nuances need to be refined for even more flexible and measurable regulation. Based on all this, we will try to make some predictions and set the right visions for the development of labor migration policy.

Keywords: circular labor migration, employment, competence, qualification/de-qualification, international labor market, visa liberalization.

Introduction

The term "circular migration" itself originally appeared in the 60s and 70s of the last century, and it was mainly related to the process of urbanization of the country, development and internal migration of the country. Today, there are many definitions related to this term with some differences. The most common formulation is the following:

Circular migration refers to the process of temporary and usually repetitive (regular) movement of migrant(s) between residential and host areas, for employment purposes.

It also covers the movement of people between countries, including long-distance movements, which, if conducted voluntarily, may be beneficial to all parties involved: For migrants, countries of origin and destination, including relevant communities and individuals. Employment schemes of a similar format are necessarily related to the protection of migrants' rights, raising their competences and focusing on development, economic opportunities of countries of origin and destination.¹

There are six criterias that define labor migration as circular:

1. Temporary/written in timeline - employment has a temporary, written in timeline nature, which in turn is agreed upon and supported by the employer's contract, work permit and other legal documents.
2. Renewable/changeable - in parallel with increasing knowledge, competences, and experience, the working conditions of the employee are subject to progressive change and include a career advancement component.
3. Regular - a person employed outside the country of origin one-time migrants cannot be considered as a Circular labor migrant. The format of employment must necessarily contain a stable rate of movement/relocation between the countries of origin and receiving.

¹ Goth A., Guidelines for Circular Migration Scheme, 2016, Page 6.

4. Legal - Participants of similar employment format have undergone all the legal procedures required for employment, holding an employer's work contract, working permit, invitation, etc.
5. The rights of migrants are protected - employees are provided by all the rights guaranteed and protected by law. They are subject to the norms and regulations of the the recipient country's legislation, like the citizens of the recipient country. They have their own responsibilities in front of the law and the state, they pay taxes and all the levers or institutions are available needed for the protection of rights.
6. Managed/optimized by the labor market for both origin and recipient countries-Such approach allows employment seekers to find out about deficient and demanded professions in various recipient countries, to get acquainted with them, contact the employer or the appropriate body responsible for the labor migration and got employed. An employment seeker can also raise the competence in advance on the basis of prior negotiations with the employer. The method of circular employment system and its introduction inevitably implies the return of the labor migrants to their homeland, which gives the former labor migrant the opportunity to introduce and develop their own knowledge and experience in the country of origin. Similar practices have been adopted and implemented in various countries around the world by legislative and executive regulations . Georgia is actually taking the first steps on this road.

1. Migration and Georgia: Timeline

The migratory history of independent Georgia can be conditionally divided into several period.

1. From 1991-until 2000 period-Gaining independence, Civil War - The next almost 10 -year period since the collapse of the Soviet Union in Georgia, we can consider as an era of illegal migration. The country was turned into areas of different opposing groups. Emigration took an absolutely uncontrolled form. First of all, for safety and self -preservation, Georgians were able to move to various countries illegally. Tools of legal employment and study are very few for this period. Europe is almost completely closed for countries like Georgia. At this time that it begins to think and understand regarding the shortage of skilled and professional workforce in the European Union.
2. 2000-2017 - partially regulated migration - for this period it was already possible to achieve a certain stabilization in Georgia. State and private institutions were strengthened, the legal base was improved. At the same time, the European policy of "lockdown" was changed, eased and got a relatively open look. Citizens of Georgia were given the opportunity and chance to use certain legal opportunities both for education and employment.
3. 2017 - till date - visa liberalization - since March 28, 2017, Georgia has a visa-free travel regime with 72 countries including EU and Schengen countries. This circumstance allowed the citizens of Georgia to develop labor relations in these countries.

Visa liberalization became the main stimulating factor for the development of circular labor migration in Georgia.

2. Georgian beginnings of the development of labor migration

Circular migration is a very relevant topic in the circles of modern international politics. Policy creators in different countries support the development and implementation of similar employment programs in national and international institutions to facilitate the movement of managed, controlled migrants between their homelands and their jobs.

Their main idea is that circular migration systems can be managed so that it can bring so called "Proverb" Results-"Profit and Making" (Benefits for the recipient by satisfying the labor market deficit, in a guaranteed way for the development of remittances and for the migrants themselves.²

As we mentioned above, circular labor migration in Georgia is directly related to the visa liberalization process with the European Union. However, it was preceded by a rather difficult preparatory road in terms of both the legislative and executive authorities and the accumulation of experience.

² Vertovec Steven, "Circular Migration: the way forward in global policy?", 2007, Page 2-3.

The first legislative document presenting the concept of migration policy was issued on November 17, 1997. It laid the foundation for the general state-level regulation of migration issues.³

In 2003, the European Union Neighborhood Policy was developed, which aims to support the process of political, economic and cultural rapprochement between the European Union and its neighboring countries.

The European Union's neighborhood policy has been extended to Georgia since 2004, and on November 14, 2006, the European Neighborhood Policy Georgia-EU Action Plan was signed, which outlines the strategic goals and priorities of cooperation, including the issues of law, freedom and security.

It was followed by strategic migration plans drawn up over the years, which are largely related to the establishment of the Governmental Commission on Migration Issues on October 13, 2010, based on the Resolution #314 of the Georgian Government.

The Governmental Commission on Migration brought together all the relevant actors in the field and established actions on a common governmental approach.

The Commission became a common platform through which it was possible to unite the main thematic areas of migration in the sectoral agencies involved in migration management, which led, on the one hand, to the profile and structural expansion and development of these agencies, and on the other hand, based on the principle of shared obligations established their grouping within the Commission.⁴

It is still today a deliberative body of the government that discusses and makes decisions on various topical issues related to migration management.

The most important among these issues are:

- Migration strategy of Georgia for 2013-2015;
- Migration strategy of Georgia for 2016-2020;
- Migration strategy of Georgia for 2021-2030.⁵

Circular labor migration in Georgia played a special role in the path of development before visa liberalization was adopted:

1. *Joint declaration on cooperation within the framework of the "Partnership for Mobility" of the European Union* - which was signed by 16 states of the European Union, Georgia joint in November 2009. The initiative aims at joint fight against illegal migration and promotion of legal migration. Accordingly, it envisages cooperation on issues related to migration, such as labor migration, readmission, reintegration, diaspora, security of documents, labor market and recognition of professional qualifications. The development of cooperation within the framework of the initiative promotes the legal employment of Georgian citizens in EU countries, including through "circular migration".
2. *Global Approach to Migration and Mobility* - This initiative was created in 2011. It is a priority of the Georgian government in terms of using opportunities for circular migration with EU member states and serves the development of bilateral contractual relations. Its working directions are: improving the management of legal migration and promoting mobility, preventing and reducing illegal migration, strengthening the interrelationship between migration and development.⁶

On June 27, 2014, the association agreement with the European Union was signed, and since March 28, 2017, new opportunities were opened for the employment of Georgian citizens in the EU and Schengen zone countries, and the issues of labor migration, the state's internal legislative and practical regulations were also on the agenda.

³ Decree of the President of Georgia #673 on the Concept of Migration Policy of Georgia (November 17, 1997), <https://matsne.gov.ge/ka/document/view/110440?publication=0> [L.s. 02.02.2023].

⁴ Georgia-EU cooperation in the field of migration compilation of key events, March 2021, Page 26, https://migration.commission.ge/files/ge-eu_m_coop_web_g.pdf [L.s. 02.02.2023].

⁵ Products of the Governmental Commission on Migration https://migration.commission.ge/index.php?article_id=225&clang=0 [L.s. 02.02.2023].

⁶ Government Commission on Migration Issues, Georgia and the European Union https://migration.commission.ge/index.php?article_id=17&clang=0 [L.s. 02.02.2023].

In 2015, the Law "On Labor Migration" was enacted, which regulates the issues of labor emigration from Georgia by regulating intermediary companies and informing potential emigrants.

In 2018, the Labor Migration Department was established in the Ministry of Internally Displaced Persons from the Occupied Territories of Georgia - to coordinate labor migration in Georgia, including temporary legal employment abroad for Georgian citizens (both inter-departmental and general country policy).⁷

In 2020, the State Employment Promotion Agency was established in Georgia, one of its work directions is the temporary legal employment of Georgian citizens abroad.

3. Circular labor migration and Georgia

Georgia has a visa-free travel regime with 72 countries, including EU and Schengen countries. This situation allows Georgian citizens to establish and develop labor relations with European countries as well as the countries of other world. Based on the Georgian experience, we can highlight the directions of circular labor migration that our citizens benefit:

3.1. Free/independent employment

the opening of borders allowed Georgian citizens to move freely between countries. Over time, they themselves were able to find employers in various fields. In accordance with their competences, knowledge and experience, they managed to get a legal job and, if necessary, increase their competences in demanding professions. At the same time, they facilitated the involvement of the employment of family members, relatives, friends, acquaintances, etc. in circular labor migration schemes. In particular, we should highlight 2 groups of countries that played a special role in forming new labor relations in the process of gaining experience in terms of this primary circular labor migration:

Group I - Baltic Sea countries: Poland, Lithuania, Latvia, Estonia.

Demanding areas of employment: welder, builder, production of auto parts, fishing, clothing and footwear production, assembly of televisions and other electronic devices, transport, etc. Separately, we should mention that Poland has a simplified temporary/circular migration scheme that allows citizens of six countries, including Georgia, to work in Poland for 6 months in a 12-month period.⁸

Group II - Central and Eastern Europe: Austria, Slovakia, Hungary, Germany.

Demanding areas of employment: IT technologies, medical field, automobile production, courier services, hotel sector, service field, agriculture, etc.

The process is almost fully adjusted and synchronized with the format of visa-free travel: 90 days/180 days, although many Georgian citizens used and still use additional legal employment levers provided by local legislation to extend the employment period (repeated contract from the employer, obtaining the right of residence, etc.).

3.2. Interstate agreements

the priority of the Georgian government is the development of bilateral contractual relations with the EU member states in order to use the possibilities of circular migration. Interstate employment agreements simplify the necessary and essential procedural aspects for employment of citizens, reduce bureaucratic risks and save time.

In order to develop interstate cooperation in the field of labor migration and expand opportunities for temporary legal employment abroad, in 2017 a dialogue was initiated with six countries, and a draft agreement on "cooperation in the field of legal temporary (circular) labor migration" was sent for consideration.

⁷ Georgia-EU cooperation in the field of migration compilation of key events, March 2021, Page 31, https://migration.commission.ge/files/ge-eu_m_coop_web_g.pdf [L.s. 02.02.2023].

⁸ Public Employment Services Portal, Declarations on entrusting work to a foreigner, 2019, <https://lang-psz.praca.gov.pl/en/dla-bezrobotnych-i-poszukujacych-pracy/dla-cudzoziemcow/oswiadczenia-o-powierzeniu> [L.s. 03.02.2023].

When circular migration is implemented within the framework of state-planned/managed schemes, usually, the needs of both the receiving and sending countries and the migrants themselves are considered. In particular:

- Emphasis is placed on where, in which occupations there is a shortage in the labor market of the host country.
- How can the labor force of the sending country benefit from employment abroad, so that in the future it can contribute to the reduction of unemployment locally.

It should be especially emphasized that the benefits of a person employed through circular migration are determined not only by his economic profit (salary), but also by the acquisition of new knowledge, qualifications, which help him find a better job after returning to his homeland. On a national level, all of the above contribute to the entry/diffusion/implementation of knowledge and so-called "know-how" about new technologies and approaches from more developed countries.⁹

Before the implementation of interstate agreements in practice, several projects focused on temporary employment and professional skills improvement were carried out in Georgia in a pilot format. Among them, the pilot project financed by IOM Georgia and the "IOM Development Fund (IDF)" in 2016-2017 - "Temporary labor migration in Poland and Estonia" - within the framework of which a number of events were carried out and aimed at the gradual strengthening of the Georgian government's capabilities in managing and implementing processes of circular labor migration.¹⁰

Currently, 3 interstate agreements are in the active phase of implementation. These programs are:

3.2.1. France

in 2013 an agreement between the French government and the Georgian government was signed about the residency and circular migration of qualified specialists. Its purpose is to facilitate temporary professional migration based on the mobility of students and qualified specialists and return after acquiring professional competence.

This agreement is the first bilateral document signed between France and Georgia in the field of professional migration. It provides for:

- The possibility to request for a 12-month residence card for Georgian students at the end of the study course, if they have obtained at least a master's or professional bachelor's degree at a French higher education institution or at a Georgian higher education institution that has an agreement on the awarding of a joint diploma with a French higher education institution within the framework of an international partnership and have the desire to gain the first professional experience after their studies in France with the perspective of their return to Georgia.
- The possibility to apply for a one-year renewable temporary residence card with reference to "hired worker" for holders of an employment contract corresponding to one of the 50 professions open to Georgian citizens (in various fields, such as construction and public works or even mechanics, restaurant field or IT technologies). According to the agreement, the number of temporary residence cards issued annually by France for this category of workers should not exceed 500.
- Development of the exchange program of young French and Georgian qualified specialists between ages of 18 and 35; Thanks to the experience gained in hired work they will go to France or Georgia to improve their career prospects. The agreement stipulates that the received number of young French and Georgian qualified specialists in both countries should not exceed 150 people per year.¹¹

On December 3, 2018, the President of the French Republic issued a law approving the aforementioned agreement.

⁹ Diakonidze A., "Research on the potential of circular migration of the Georgian workforce in EU countries", 2018, p.13, https://migration.commission.ge/files/cm_potential_research_final_16.11.18_.pdf [L.s. 02.02.2023].

¹⁰ Official website of IOM Georgia on "Temporary labor migration to Poland and Estonia", <https://georgia.iom.int/ka/shromiti-mobiluroba-da-adamianis-ganvitareba> [L.s. 02.02.2023].

¹¹ Agreement between the Government of Georgia and the Government of the Republic of France on the Residence and Circular Migration of Qualified Specialists, 2013, <https://matsne.gov.ge/ka/document/view/4476017?publication=0> [L.s. 02.02.2023].

Those wishing to benefit from the agreement have the opportunity to contact the French Embassy in Georgia or the French Ministry of Internal Affairs, where they will receive detailed consultation.

3.2.2. *Germany*

Bilateral framework agreement on seasonal employment of Georgian citizens in the agricultural sector in Germany. It was signed on January 17, 2020, between the German Federal Employment Agency (BA - Bundesagentur für Arbeit) and the State Employment Promotion Agency of Georgia (SESA).

The agreement defined the institutions responsible for the employment of Georgian citizens for seasonal work, employment conditions and procedures. The agreement entered into force upon signing.

Based on the mentioned agreement the employment of Georgian citizens, for seasonal work in Germany could not be carried out in 2020, due to the Covid-pandemic. It became possible to start this process only since February 2021.

Within the framework of the document, citizens of Georgia were given the opportunity of temporary legal employment in the German labor market, in the agricultural sector - for periods of up to 90 days at a time (maximum 70 working days), every 180 days. The program does not imply only one-time employment, people involved in it can be employed repeatedly without limit if they wish. The program is still active and is mainly focused on people employed in the agricultural sector, although participation in the program is not limited for people from other fields/professions.

3.2.3. *Israel*

The agreement signed between Israel and Georgia and the first protocol of its implementation provides an opportunity for 1,000 Georgian citizens to work as home care specialists in Israeli medical institutions for a period of 1 year, with the prospect of extension up to a maximum of 5 years.

The first pilot phase of the program began in April 2021, but due to the pandemic, its implementation was delayed. From 2022, the implementation process of the program was renewed and a certain number of Georgian citizens were employed. In 2023, the program is still active and continues to function in an updated format.

It should also be noted separately that in 2019, the agreement "On the regulation of labor migration between the Republic of Bulgaria and Georgia" was signed. According to the agreement, Georgian seasonal workers will be given the opportunity to be employed in the agricultural sector for a period of no more than 9 months per year.

Initially, they will be granted a one-year residence permit, with the option of further extensions, for a total of three years. The program has passed all the preparatory stages and is waiting for the start of the practical implementation process.¹²

Currently, Georgia is working on signing a bilateral agreement on circular migration with the governments of the following countries: Greece, Norway, Sweden, Finland, Lithuania, Spain, Portugal, Estonia, Poland, Czech Republic, Hungary, Ireland and Cyprus.

Efforts made by the Government of Georgia to sign bilateral agreements to obtain preferences/opportunities with EU member states have not yet brought sufficient results. More support and development of legal temporary, circular labor migration schemes, based on interstate cooperation, is essential for effective migration management. Georgia needs strong diplomatic efforts to convince EU member states to institutionalize circular migration.

3.3. Private employment companies

Georgia has the most uncertain situation in the direction of private employment companies. For years, the practice of employing Georgian citizens abroad through these "intermediary private companies" has been problematic, which ultimately takes the form of illegal and uncontrolled labor migration. We are

¹² Agreement between the Government of Georgia and the Government of the Republic of Bulgaria on the Regulation of Labor Migration, Article 2, 2019, <https://matsne.gov.ge/ka/document/view/4701239?publication=0> [L.s. 02.02.2023].

facing serious violations of labor rights of Georgian citizens abroad. According to the Law on Labor Migration of 2015, private employment companies are obliged to submit information on the mediation activities performed during the calendar year to Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. This regulatory rule applies to the conditions of employment of foreigners in Georgia. However, in practice, their monitoring, quality control and enforcement mechanisms are quite vague and non-functional. For the quality functioning of the field, a flexible legal framework and enforcement levers are needed, because in the potential future they should become real, legal intermediaries between job seekers and host countries.

4. Statistics

According to various data, the population of Georgia suffered much more losses as a result of external migration in the 1990s than during the previous 30-year period. During the period of 1990-2000, through external migration, Georgia reduced the population of 1989 by 19%, that is, almost every fifth person left the country.

In the period of 1995-2000, according to the statistics department, between Georgia and other countries, 69.1% of the negative balance came to Russia. In 1995-1996, the negative balance for Georgia with Russia was 72% of all external migration. In the following years, the negative balance with Russia decreased significantly and for the period of 1997-2000, on average, it was only 36.7%.

Overall, today, Georgia continues to meet the criteria for visa liberalization. It took measures to implement the recommendations of the European Commission. However, further efforts are needed to address the issue of unfounded asylum applications in EU Member States, in the areas of prevention and fight against money laundering, trafficking, corruption and organized crime.

In 2021, a total of 99,974 people left the country, and 74,008 people entered. Among the emigrants, 61,740 (61.7%) were men. It is noteworthy that among the persons who left the country, 80,351 (80.3%) were Georgian citizens, while only 39,526 (53.4%) of those who arrived were Georgian citizens. Accordingly, in just one year, the number of Georgian citizens in the country decreased by 40,825, and the number of foreign citizens increased by 14,859. This shows that there is a shortage of jobs in Georgia, Georgian citizens are traveling abroad and they are gradually being replaced by citizens of foreign countries.

Despite these and many other types of statistical data, unfortunately, none of them is based on a study of Georgian citizens involved in the process of circular migration, which is why we cannot get a complete picture of what changes circular migration opportunities and programs have made in the formation of the general migration balance of Georgia. Empirical studies on separate circular migration are accordingly very scarce.

For an imagination, we can use the studies of the European Union - after the enlargement in 2004, 2007 and 2013, 13 new member states were added to the European Union, which led to a new flow of circular labor migrants in European countries. In the research conducted by the European Migration Network, the positive practices and its aspects resulting from temporary and circular labor migration in the EU countries are discussed.¹³ Although evaluations of relevant programs and policies demonstrate positive outcomes for participating migrants, there is little evidence of significant benefits for countries of origin or employers.

In the Georgian space, the only survey in this direction has been conducted by the International Organization of Migration (IOM) on a small scale.¹⁴ according to which 86% of the participants of the inter-state agreements return to their homeland, adhere to the contractual regime and at the same time try to establish themselves in the local labor market.

In general, to assess the full picture of the EU's vision for the labor market, even if all sixteen signatory countries of the "Partnership for Mobility" declaration allocate an annual quota to Georgia, this number

¹³ The European Migration Network, Temporary and circular migration: empirical evidence, current policy practice and future options in the EU Member States, 2011.

¹⁴ Results of the survey of working and living conditions of Georgian citizens employed in the field of agriculture within the framework of cooperation between the Federal Republic of Germany and Georgia, 2022.

will still be too small to have a significant impact on the country's development and will not be able to eliminate the unemployment problem.¹⁵

If we assume that the rest of the signatory countries, like France, allocate 650 quotas to us annually, the total number of annual quotas will be 10,400. If this quota is completely directed only to the unemployed (which is unrealistic), only 4.2% of those seeking employment will be able to benefit from the circular migration scheme. Therefore, this scheme may only affect the legal employment of a few thousand illegally employed migrants, but will not directly affect the reduction of unemployment. It is necessary to conduct additional studies considering the Georgian working environment and opportunities, so that the potential results become somewhat predictable and manageable.¹⁶

In the end, under the conditions of proper management, people returning to their homeland, with already elevated competencies and knowledge, should themselves become new employers in their homeland, creating jobs in the local labor market. This is the ultimate goal of circular migration for countries like Georgia, it is the promotion and stimulation of commercial activities initiated by these people that will lead to the reduction of unemployment in the local labor market.

5. Practical experience, challenges and risks

The vast experience of illegal migration, accumulated over tens of years, gives a certain psychological orientation to the whole process of labor migration, which acts as a public habit, tradition. Under the influence of this mythological portrait of actions, people instinctively organize a chain of actions and are ready to go to a foreign country as illegal labor, paying thousands and tens of thousands of dollars to so-called "middlemen". All the benefits associated with legal employment are available to them today. Within the scope of the opportunity, they will be able to increase their professional competences, learn new professions, improve their language skills, etc. So that they can realize themselves in the international labor market with much less expenses and risk. Focusing on the development of personal and professional skills is the direction in which potential labor migrants should be positioned at all levels.

The process of visa liberalization started to bring positive changes to the agenda of Georgian labor migrants precisely in terms of correcting this situation. However, it is also clear that there is a lot of effort and work to be done on this path. The main challenges for development in this direction are the following main components:

- Creating/conducting proper information campaigns on the possibilities of legal labor migration in order to adequately provide basic information to labor migrants on the benefits of similar employment schemes.
- More availability of training courses and programs for raising professional skills, competences, etc.
- Improvement of legislative, monitoring, regulation and accountability mechanisms.
- Strengthening governmental and diplomatic activities at the international level, for the conclusion and implementation of more interstate agreements.
- Distribution of competences and responsibilities to public groups and organizations.

Further development of circular labor migration schemes is a viable alternative to spontaneous and illegal migration. The information and communication strategy must necessarily focus on its advantages and benefits primarily for the country of origin, where the main characteristics of circular employment must be emphasized:

- Financial stability
- Safe work environment and conditions
- Development of professional skills

¹⁵ Government Commission on Migration Issues, Georgia and the European Union https://migration.commission.ge/index.php?article_id=17&clang=0 [L.s. 02.02.2023].

¹⁶ Burduli Ana, "The Role of Circular Labor Migration in Reducing Unemployment: How Ambitious Should It Be?", ISET Policy Institute, 2019, <https://iset-pi.ge/en/blog/109-tsirkularuli-shromiti-migratsiis-rol-i-umushevrobis-shemtsirebashi> [L.s. 02.02.2023].

- Accumulation/renewal of work experience
- Career advancement
- Connections/Communication
- Implementation of acquired skills in the economy of the country of origin.

We must separate the possibility of contact and reunification with the homeland/family. All the past decades have dealt a great blow to the demography of Georgia, many of our fellow citizens could not and cannot return to their homeland for decades, because they are in a foreign country illegally and in case of arrival, they will not be given the opportunity to leave again. That is why the issue of family unity is an especially important component of circular labor migration.

Despite this difficult migration experience of Georgia, some positive changes have occurred in the outlook of people involved in the process of circular migration: understanding/revaluing the differences and advantages of legal and illegal employment; focusing on meeting travel or work deadlines; taking care of raising own competencies and skills; understanding of dual contractual responsibilities (between employer and employee); Comprehension of work norms, protection of the quality of work performed.

The main risk, especially for a small, developing country like Georgia, is the so-called "Brain drain", and this type of risks always accompanies the migration process.

Circular migration to some extent contains the possibility of reducing and insuring such risks. It creates, on the one hand, a certain basis for the outflow of intellectual resources from the country, and on the other hand, it creates the possibility of avoiding inefficient use of people who have returned to their homeland in the local employment market. However, this process, taken separately, will not have a great impact on dealing with the challenges of labor migration, if the country's industrial and economic development does not respond to the numerical growth of professional staff in various fields within it with appropriate progress.

Conclusion

Experience and various studies show us that people who have decided to migrate, despite all the restrictions, they still manage to do it, no matter what kind of difficulties it involves. Therefore, the task of the state is to simplify the procedures for inclusion in the scheme of legal migration to such an extent that illegal migration becomes secondary for potential labor migrants. To create a certain counterweight balance between them.

We can say that the development of the country's labor migration in a positive direction is directly proportional to the level of ongoing progress of the country's economic and industrial development, if the economic development and employment policy carried out by the state does not push people involved in this type of employment schemes to de-qualify, or to leave the country again. It is also important to pay due attention to the issues of social security, minimum wages, protection of working conditions, effective employment and social justice in the country.

In most cases, labor migrants return to their home country with improved skills and higher qualifications (gained from training and work experience abroad) and become creators of their own lives, which will certainly benefit the local labor market with appropriate promotion

Although the development of circular migration schemes is an important and necessary step, it cannot unilaterally become a guarantee of solving the unemployment problem and migration-related problems for the country of origin. In order to increase the benefits of circular migration for the sending country, it is important to create jobs for returning migrants. In order to give them the opportunity to develop their potential, both the state and the private sector need to take active, effective measures and implement them in practice.

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CAUSES OF MIGRATION AND ITS IMPACT ON THE ECONOMY

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Abstract

Migration is a process with multi dimensions, which ambiguously effects on various components and individual parameters of the economic life of the host society. Furthermore, direction and intensity of this influence may be importantly different in each concrete case. Due to the specific of immigration, evaluation of its results is difficult task, which requires comprehensive and balanced analysis. It was traditionally considered that immigration provides host society with lost labor recourses and it significantly contributes in their economic development.

Migrants often settle within their home region. However, a significant part of international migration takes place over long distances and, in particular, from emerging market and developing economies toward advanced economies.

A major reason why people migrate is income differences between origin and destination countries. Richer countries attract more immigrants, especially from countries with younger populations. There is difficulty to evaluate effect of immigration on economic. This is impact on tax incomes and expenses of government. On one side, immigrants pay taxes, helping cover the cost of government. On the other side, they impose costs on the government, because their cars need roads to drive on, their children need schools to study in, and so on. Because many immigrants earn low wages and hence pay low taxes, some estimates suggest that immigrants cost more in additional spending than they pay in.

Despite the above international policy coordination is needed to tackle the challenges from refugee migration. This includes sharing the costs from hosting refugees and fostering their integration with emerging and developing economies, such as language training and easier validation of professional titles, can help build even better outcomes from immigration in recipient countries.

Keywords: War, labor migration, former international students as labor migrants, unemployment, specialization of agricultural production, protected schemes, increase of incomes.

Introduction

Flexibility and efficiency of labor market is one of the basic factor of sustainable development of social – economic system. Social and economic shocks have serious influence on dynamic of processes of employment and as a result, on the development of economic system. Economic crisis and pandemic has exacerbated employment issues in the labor market and indicated on the inevitability of the process of digitalization of communications, it significantly changed organizations and technologies in professional activities.

Accordingly, migration is a process with multi dimensions, which ambiguously effects on various components and individual parameters of the economic life of the host society. Furthermore, direction and intensity of this influence may be importantly different in each concrete case. Due to the specific of immigration, evaluation of its results is difficult task, which requires comprehensive and balanced analysis. It was traditionally considered that immigration provides host society with lost labor recourses and it significantly contributes in their economic development. Migration processes exist in the whole world and it has multi pectoral orientation, but clearly determined centers were established on labor market in which basic labor recourses are flowing. Migrants often settle within their home region. However, a significant part of international migration takes place over long distances and, in particular, from emerging market and developing economies toward advanced economies.

1. Main economic reasons of migration

In this topic I will discuss about main economic causes of migration and its impact on advanced economies, refugee immigration to developing countries, and former international students as an important source of labor migration.

1. Wars mainly explain migration between emerging and developing economies, is a more localized phenomenon, as vulnerable populations leave home suddenly with few resources and travel to a safe destination, usually close to the home country. Emerging and developing economies are therefore both the origin and the main destination of refugees.

Responding to the refugee crisis from Ukraine Russia's unprovoked war of aggression against Ukraine, which started on 24 February 2022, generated a historic mass flight. OECD countries responded swiftly, granting immigration concessions to Ukrainian nationals, such as visa exemptions, extended stays or prioritisation of immigration applications. The Council of the European Union enacted, for the first time, the Temporary Protection Directive, which provides a set of harmonised rights for the beneficiaries in all EU Member States. Non-EU OECD countries also took, to varying degrees, measures to facilitate the entry and stay of Ukrainian people fleeing the war.

In middle days of September of 2022, in the countries of European Union and OECD, there was marked 5 million individual refugees from Ukraine, from which 4 million were registered at schemes of temporary security or similar national security in Europe.

2. A major reason why people migrate is income differences between origin and destination countries. In middle days of September of 2022, in the countries of European Union and OECD, there was marked 5 million individual refugees from Ukraine, from which 4 million were registered at schemes of temporary security or similar national security in Europe.

Richer countries attract more immigrants, especially from countries with younger populations. The majority of labor migrants do not have stable job in their native countries. Countries with lower per capita income experience more emigration, but only if they are not too poor. This suggests that people get trapped in poverty since they are deprived of the resources needed to overcome migration costs. At the same time, we should not forget that the costs of migration include geographical and linguistic barriers, which together explain a large share of the variation of migration flows.

The truly heroic age of labor mobility was in the late 19th and early 20th centuries. In a global economy newly integrated by railroads, steamships, and telegraph cables, and not yet subject to many legal restrictions on migration, tens of millions of people moved long distances in search of a better life. Chinese people moved to Southeast Asia and California, while Indian people moved to Africa and the Caribbean; in addition, a substantial number of Japanese people moved to Brazil. However, the greatest migration involved people from the periphery of Europe—from Scandinavia, Ireland, Italy, and Eastern Europe—who moved to places where land was abundant and wages were high: the United States, Canada, Argentina, and Australia.

In case of non-existence of migration, difference of salaries between countries may be cause by differences in land resources related to technology or labor. If the workforce moves from their native countries to a foreign country. This movement will reduce the Home labor force and thus raise the real wage in Home, while increasing the labor force and reducing the real wage in Foreign. If there are no obstacles to labor movement, this process will continue until the real wage rates are equalized.

It is important to distinguish three points should be noted about this redistribution of the world's labor force:

1. It leads to a convergence of real wage rates. Real wages rise in Home and fall in

Foreign.

2. It increases the world's output as a whole.

3. Despite this gain, some people are hurt by the change. Those who would originally have worked in Home receive higher real wages, but those who would originally have worked in Foreign receive lower

real wages. Landowners in Foreign benefit from the larger labor supply, but landowners in Home are made worse off.

This process cause the kind of real wage convergence.

Table shows real wages in 1870, and the change in these wages up to the eve of World War I¹.

	Real Wage, 1870 (U.S. = 100)	Percentage Increase in Real Wage, 1870–1913
Destination Countries		
Argentina	53	51
Australia	110	1
Canada	86	121
United States	100	47
Origin Countries		
Ireland	43	84
Italy	23	112
Norway	24	193
Sweden	24	250

As the table shows, at the beginning of the period, real wages were much higher in the destination than in the origin countries. Over the next four decades real wages rose in all countries, but they increased much more rapidly in the origin than in the destination countries, suggesting that migration actually did move the world toward wage equalization.

The share of immigrants in the U.S. population has varied greatly over the past two centuries. At the turn of the 20th century, the number of foreign-born U.S. residents increased dramatically due to vast immigration from Eastern and Southern Europe. Tight restrictions on immigration imposed in the 1920s brought an end to this era, and by the 1960s immigrants were a minor factor on the American scene. A new wave of immigration began around 1970, this time with most immigrants coming from Latin America and Asia. Although the share of immigrants has been steadily increasing ever since, it is still below the levels reached during the first wave of immigration. The most direct effect is that immigration has expanded the work force. As of 2014, foreignborn workers make up 16.7 percent of the U.S. labor

It was followed by the fact that MERCOSUR is the largest grouping in South America (Argentina, Brazil, Paraguay and Uruguay, and Chile and Bolivia as associate members). According to agreement of Asunson in labor relationship, the principle of free movement of labor force in the MERCOSUR countries was implemented and thus a labor market with a capacity of more than 210 million human resources was created. All countries of region faced to problem such as: unemployment, depreciation of labor force and "social dumping". Countries involved in MERCOSUR are different not only with their economic development, but also with their tradition, culture, demography and level of education of population. It definitely has impact on new labor market.

Movement of work force between labor markets of different countries is based on difference of national economic potential and it depends on migration possibilities of regions. We should consider possibility of migration as availability of migration resources, which are represented in donor countries and they are potentially directed toward the countries which receive migration. Migration capacity depends not only on the capacity of the donor countries, but also on the required scale and desired structure of migrants for the attractive country, as well as on the acceptable conditions of their reception. As a result of import of labor resources, immigrants increase earning and productivity in a shower and moderate term. Receiver country takes cheap work force and prepared specialists, as a result economic increase is accelerated and dynamic of state budget is positive. In developed economies 1 percentage point increase in the inflow of immigrants relative to total employment increases output by almost 1 percent by the fifth year. That's because native and immigrant workers bring to the labor market a diverse set of skills, which complement each other and increase productivity. Also even modest productivity

¹ Jeffrey G. Williamson, „The Evolution of Global Labor Markets Since 1930; Background Evidence and Hypotheses,“ *Explorations in Economic History* 32 (1995), pp. 141–196.

increases from immigration benefits the average income of natives. At the same time, the increased concentration of non-indigenous population in the territory has a negative impact on social and not only social relations in the host countries.

One widely cited estimate is that average wages in the United States are 3 percent lower than they would be in the absence of immigration. However, comparisons of average wages can be misleading. Immigrant workers are much more likely than native-born workers to have low levels of education. In 2006, 28 percent of the immigrant labor force had not completed high school or its equivalent, compared with only 6 percent of native-born workers. Accordingly, workforce with different levels of education is different costs for enterprise and they cannot easily replace each other. As a result, most estimates suggest that immigration has actually raised the wages of native-born Americans. Any negative effects on wages fall on less-educated Americans. There is, however, considerable dispute among economists about how large these negative wage effects are, with estimates ranging from an 8 percent decline to much smaller numbers. America's gross domestic product—the total value of all goods and services produced here—is clearly larger because of immigrant workers.

However, the positive impact of productivity is not visible for refugee immigration to emerging market and developing economies. This reflects the difficulties that these migrants face in integrating into local labor markets.

However, the share of migrants in the world's population has hovered around 3 percent over the past 60 years. Quantity of migrants are increased with more than 120 million from 1990 till today. Due to crisis caused by COVID - 19 of 2020, Migratory flows were temporarily stopped abruptly. The forcibly interrupted social relations caused by the pandemic and the resulting deformations have left their mark on the entire system of human relations. Less immigration and high unemployment in destination economies would hurt origin countries, especially poorer ones, that rely significantly on the remittances that migrant workers send back home.

After a record decrease in 2020 due to the COVID-19 crisis, permanent-type migration to OECD countries bounced back by 22% in 2021. OECD countries received 4.8 million new permanent-type immigrants, but still more than half a million fewer than in 2019. First data suggest that the increase in permanent migration flows continued in 2022. Family migration increased by 40% in 2021 and remained the largest category of inflows, labor migration - by 45% and the number of new asylum applications to OECD countries rose by 28% in 2021, to above 1 million. The main origin countries were Nicaragua, Afghanistan and Syria.

The United States remained the largest recipient of permanent immigrants in 2021 (834 000), 43% more than in 2020, and 19% less than in 2019. The population in emerging market and developing economies will continue to rise over the next 30 years and migration pressures toward advanced economies are likely to increase.

3. Former international students are an important feeder for labour migration in many countries. During their studies, between one in three and one in four international students work in the EU, the United Kingdom and the United States, about one in two in Australia and nine in ten in Japan.

In 2020, there were 4.4 million international students enrolled in the OECD, accounting for on average 10% of all tertiary students. The most important receiving countries are the United States (22% of all international students), the United Kingdom (13%) and Australia (10%). While the destinations of international students have diversified over the past decade, the main origin countries remain China and India.

Over the past decade, almost all OECD countries implemented wide-ranging policies to retain international students after completion of their degree, but the retention of international students varies greatly. Five years after initial admission, more than 60% of international students who obtained a permit for study reasons in 2015 were still present in Canada and Germany, around half in Australia, Estonia and New Zealand, and around two in five in France and Japan. The share of students remaining was below 15% in Denmark, Slovenia, Italy and Norway.

Transition from study permits accounted for a large share of total admissions for work in 2019, especially in France (52%), Italy (46%) and Japan (37%). In the United States 57%. International

students who remain in the host country post-study have long-term employment rates that are on par with those of labour migrants and well above those of migrants overall.

While student migration can be of great benefit, the delegation of a gatekeeping role to higher education institutions, and the growing share of economic migration comprised by former students, still carry a number of risks, including distorting migration regulation and undermining labour market regulations.

Across OECD countries, international students made up 5% of students enrolled at bachelor's, 14% at master's, and 24%² at the doctoral level in the academic year 2020. In 2020, 29% of international students in OECD countries remained in the same broader geographical region.

In the OECD as a whole, direct export revenues from international students increased in nominal terms from over EUR 50 billion in 2010 to over EUR 110 billion in 2019.

2. Assessment of the impact of migration on the economy and the policy of Georgia

There is difficulty in estimating the impact of immigration on the economy. However, it's seemingly undeniably positive economic effect is diminishing more and more now when negative social – political results of immigration clearly are clearly shown in countries and regions where migrants arrive and which mostly results from its characteristics and there is clearly shown:

- Increased threat of terrorism;
- Erosion of national identity and racism;
- The growth of ethnic conflicts and political extremism;
- Increase of exploitation between migrant workers and entrepreneurs that is marked by decrease of salaries;
- Outflow of national currency in the form of exports or transfers of funds by migrants;
- Arising additional problems, which are related to the social protection of migrants, increase of level of crime;
- The growth of the shadow economy sector in the absence of formal employment opportunities for migrants;
- Loss of trained cheap immigrant specialists upon return to their home countries;
- Reduction of wages among the indigenous population (at places where local workers compete to emigrants);
- Increase of social expenses;
- Slowing of economic increase and etc.

Similarly to other countries of the World, factors causing emigration and immigration in Georgia are also complex and related to economic, social and political changes and also people's individual decisions. In history of Georgia, there was a period when main reasons of emigration were unstable situation existing in the country and circumstances regarding safety. However, later economic and social factors played significant role, namely:

- Unemployment existing in the villages caused massive migration of village population in the cities / towns, also their emigration abroad. Problem gets more severe by the fact that specific share of teenagers (until 16 years old) is annually reduced and specific share of older people (over 60 years old) is annually increased among population of village, that's why indicator of natural increase in absolute majority of villages is below zero;
- Important economic differences of life level,
- Migrants' desires to improve their families' standard of living by moving to a new place of residence or traveling abroad to earn money;
- Networks of expatriates abroad;
- Better possibilities to gain education in developed countries.

As a result, migration processes in our country caused social conversions, namely deformation of age and gender structure, natural decrease of population and effect of “brain drain”.

² Migration flows bounced back in 2021

<https://www.oecd-ilibrary.org/sites/30fe16d2-en/index.html?itemId=/content/publication/30fe16d2-en> [L.s. 1.03.2023].

Efficiency of labor recourses are revealed by determination of unemployment level, that is characteristic for quality of correct usage of labor recourses. It is true that unemployment was reduced with 6.6 % for last 10 years in case of Georgia (according to data of 2010 – 2021) and it is 20.6 % according to data of 2021, but compared to the world unemployment rate (6.18 %) of the same year, it is three times more. Additionally, the problem of low income level affects all categories of employees. Although the average monthly nominal salary of employees in the economy improved in some areas, but its value is still low – 1360 Gel³, when this value is 2570 Euro⁴ in Europe, it is 4176 \$⁵ in the USA. At the same time, during pandemic, in 2019 -2021, unemployment was still increased with 3 % that causes process of labor immigration. As a result, we got a type of population reproduction characterized by a low birth rate, increase of death and negative saldo of migration 2021 – (-25 966)⁶ people and increase in the volume of remittances, that is more with 133.2 5 (2022 – 535, 3 mln USD dollar) compared to indicators of previous year⁷ and it is an important source of livelihood for a large part of immigrant families. At the same time, remittances make a great contribution to the development of human capital, as they are mostly used for health care and education.

According to the data of the National Statistical Service of Georgia under condition of 1st January of 2022, quantity of population of Georgia amounts 36886 and 99 974 of them are emigrants, which is more with 34.6 % compared to data of previous year and 88.6 % of them working age population (15-64 age group).

Emigrants by country of current residence

Country of usual residence	Total
Russia	19 195
Greece	14 048
Turkey	9 922
Italy	9 612
Germany	6 259
USa	5 021
Total	99 974

At this time Georgia is experiencing the demographic crisis mentioned above and it is a supplier of cheap labor migration resources, which is so necessary for the sustainable development of our economy.

Beside this, the share of imported products in the volume of the grocery basket consumed in the country is increasing year by year, that substantially delays development of local agriculture manufacturing and termination of labor migration.

Accordingly, effective management of migration is a formula with two tasks for solving demographic and unemployment problems for Georgian politics. It is also an important instrument for getting closer to European Union because labor market is integral part of social system and significant component of economic system. Economic increase of concrete territory is exactly depended on efficiency and balance of the market. Both the government and socio-economic regulatory measures have a complex effect on the labor market. Development of labor market is directly depended on demanding of labor and providing of labor. During the process of functioning of labor market, there is created interdependent equilibrium between the level of employment and the level of wages due to temporary balance between mentioned factors. Under these conditions, labor supply is directly proportional to the wage level.

That's why proper planning and management of the migration politics in our country began in 1997 during the period of President Eduard Shevardnadze, when there was created first document „ On

³ Households Incomes, <https://www.geostat.ge/en/modules/categories/50/households-income> [L.s. 1.03.2023].

⁴ Average Monthly Salary in European Union 2022 <https://www.reinisfischer.com/average-monthly-salary-european-union-2022> [L.s. 1.03.2023].

⁵ America: Rankings by Country of Average Monthly Net Salary (After Tax) (Salaries And Financing) https://www.numbeo.com/cost-of-living/country_price_rankings?displayCurrency=USD&itemId=105®ion=019 [L.s. 1.03.2023].

⁶ Migration, <https://www.geostat.ge/en/modules/categories/322/migration> [L.s. 1.03.2023].

⁷ money-transfers, National Bank of Georgia <https://nbg.gov.ge/en/page/money-transfers> [L.s. 1.03.2023].

conception of migration politics of Georgia". Subsequently, the 2013-2015 and 2016-2020 migration⁸ strategies became a strategic documents for Georgia. They were developed on the basis of accumulated experience and taking reality of that time into consideration (there are meant the Association Agreement and Visa Liberalization Acting Plan). However, existing regulatory framework turned out to be insufficient, as a large number of migrants could not be registered and counted. It is true that new rules were important steps forward, but they could not solve bulk of problems, such as massive illegal migration and acceptance of working permission.

Despite of this, our government is not passive observer of political circumstances regarding movements occurred in the field of global and local migration and changes relating to them. As a result, in 2021-2030 strategy of migration⁹ was developed and its aim is the following:

formulate the state's concrete interests in the field, adjust the 'migration and development' policy to them, and, by applying successful international practice, develop its own system aimed at addressing the challenges faced by the world community.

3. Difficulties of formation of labor market and ways to solve them

At the time of discussing about labor market and assessment of its impact on labor migration, it should be mentioned that thesis of classical theories do not give possibility to describe interaction between potential migrants and employers because this approach does not take into account the regulations on the behavior of migrants while moving.

According to the theory of marginal productivity developed by representatives of the neoclassical direction, in which cost of goods is determined by their marginal utility on the basis of subjective evaluation of necessities of an individual person. Under these provisions, government regulation is not a necessary tool to ensure full employment. At the same time, regulation about provision for flexible response of wages to market needs according to supply and demand makes it possible to take into account impact of dynamic of migration of population on development of labor market. Supporters of neoclassical school supposed that amount of salaries is one of the main regulatory mechanisms of labor market and increase of salary causes more expenses on enterprise and decrease of working places. It was also noted that along with the decrease in production costs, the price of the product decreases and the purchasing power of the population increases. As a result, additional demand is arisen which supports expanding of manufacture and employment.

Part of economists scale for small countries is, to specialize in the production and export of a limited range of products and to import other goods. Import-substituting industrialization eliminates this option by focusing industrial production on the domestic market. Those who criticize import-substituting industrialization also argue that it has aggravated other problems, such as income inequality, migration and unemployment.

In order to solve a problem in Georgia, we should determine the best area for the distribution of plants for individual villages, the best natural conditions for the organization of animal husbandry and taking into account them, we should make the correct specialization of agricultural production and the formation of rational measures of farming with the help of special structures (ministries of agriculture and finance) to be able to introduce schemes protected by the state and delimit the priority agricultural crops for the state that will cause employment of the able-bodied population and income growth. Higher incomes in emerging market and developing economies will reduce migration pressures.

Other pressures explored as alternative scenarios will also impact migration. For instance, climate change is expected to lead to a significant increase in internal and regional migration in emerging market and developing economies. At the same time, suggest that its impact on migration toward advanced economies is less clear-cut, given that lower incomes in many poorer countries may "trap" more individuals in their region of origin.

⁸ Migration Strategy of Georgia 2016-2020, https://migration.commission.ge/files/migration_strategy_2016-2020.pdf [L.s. 1.03.2023].

⁹ Migration Strategy of Georgia 2021-2030, https://migration.commission.ge/files/ms30_eng_web2.pdf [L.s. 1.03.2023].

For creation and development of labor market in Georgia, it is necessary to develop a migration policy, about which we discussed in the topic, as well as to attract and employ qualified specialists, to form conception of social – economic development of Georgia in order to maximally increase incomes using the resources that our country has, taking into account the natural-climatic-geographical factors.

Development of labor market will decrease migration flows if programs are developed with potential migrants, taking into account their education, qualification level, language skills and personal characteristics in order to attract high-quality labor resources necessary for sustainable economic growth.

Optimization of current migration processes on labor market, implementation of development programs and events will give Georgia the basis to implement the following:

- Measures to reduce unemployment and to provide economic development of country;
- Control of dynamic of educational and scientific migration;
- Management of labor migration at the time of social-economic risks, uncertainty and crisis conditions;
- Maintenance of returning labor-employment;
- Reduction of migration of qualified specialists, who are involved in foreign scientific organizations in order to implement perspective joint projects.
- Attracting foreign scientists to work on scientific projects.

Conclusion

It should be mentioned that on one side, migration has one benefit for host countries and it gives migrants possibility for better life. But, it also has possibility to arise problems in the area of distribution of tax revenue and government expenditure, because local workers may have economic loss in certain segments of market, at least temporarily. Therefore, tax and labor market policies should be used to support incomes and retrain local populations facing labor market difficulties. On one side, immigrants pay taxes, helping cover the cost of government. On the other side, they impose costs on the government, because their cars need roads to drive on, their children need schools to study in, and so on. Because many immigrants earn low wages and hence pay low taxes, some estimates suggest that immigrants cost more in additional spending than they pay in.

Despite the above international policy coordination is needed to tackle the challenges from refugee migration. This includes sharing the costs from hosting refugees and fostering their integration with emerging and developing economies, such as language training and easier validation of professional titles, can help build even better outcomes from immigration in recipient countries.

Finally, and most importantly for the analysis of future migration pressures, the population size of the source country is the main driver of migration flows. Scientists suppose that mobility of population will increase by volume and their social and cultural characteristics will become much more diverse because migration processes are the result of the entry of national economies into global relations and they can be seen as a stimulus for further social transformations in both host and origin countries.

it may be helpful to recall what Swiss author Max Frisch once said about the effects of immigration into his own country, which at one point relied heavily on workers from other countries: “We asked for labor, but people came.”¹⁰

¹⁰ Hanson, G., „Challenges for Immigration Policy,” in C. Fred Bergsten, ed The united states and the World Economy: Foreign Economic Policy for the Next Decade, Washington, D.C : Institute for International Economics, 2005, pp. 343-372.

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CAUSING FACTORS OF MIGRATION AND HUMAN RIGHTS

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Abstract

The said article on the study of the migration process of the motivation and push factors for migration and analysis of the human rights of the people, the cause of the migration of one state party can be the cause of human rights as the citizens of the country who make the behavior as a decision and on the other hand, it is very important for the migrants. There are many contributing factors to migration, including economic, political, socio-political, human rights factors, natural, health-related, cultural and educational factors. States where the level of social and economic life is low, human rights are not protected, the citizen has no income, there are small and unpromising opportunities for employment, due to which the unstable political environment loses a large part of citizens over time, therefore migration can be due to both labor and family factors.

The article also discusses the facts of migration and the directions caused by political factors and cold-blooded confrontations in the past, the First and Second World Wars led to the largest-scale migrations and changes in residential location. Also important is the structure and nature of migration, which can be shaped by the causes of violence and war. In international migration, human rights are particularly relevant and important, systemic or legal problems before leaving the country, and the attitudes of migrants towards them in the receiving state, are their rights fully protected?

The important research results in the article are:

- Migration has acquired its character based on historical facts from the past, for example population migration is frequent from East Africa to North Africa, from East Africa to Europe, as well as population migration from Islamic states to Europe due to the insecurity of the population, especially women's rights, with the motive of providing physical protection and security.
- The desire to get an education and simply to travel remains a contributing factor to migration among young people.
- The factors causing migration in international migration remain: the right to life, the right to personal freedom, the right to religious freedom, freedom of movement and movement, freedom of speech, the right to physical security.

Key words: migration, challenge, human, right.

Introduction

In the recent period, the cases of migration have increased worldwide, people leave their native countries and cities much more intensively, they make these decisions for various reasons, often it is impossible to achieve the goal or situation they have determined in the current living conditions. For example, if they stay, they will not be able to improve their socio-economic background of life, they will not be able to get quality education, they will not be able to be employed in promising companies, they will not be able to be compensated for their work adequately, better than the subsistence minimum, with enough pay to live and support their families. The right to life and life safety are also a problem, despite the existence and action of human rights protection conventions, formal and informal international organizations, the issue of physical and life safety of citizens of many states is still unresolved, the motive of saving life and living in a safe environment is also one of the important motivations and

prerequisites for migration. Taken for different purposes, it is logical that if everything is in order, citizens will not leave their native countries, so the statistical indicators of migration reveal quite a lot of problems, as well as give a lot of useful information about the states where the number of immigrants is high. In migration processes, the analysis of its causative factors and human rights are particularly relevant, conventions and international human rights are especially important, what steps are taken to eliminate problems, what forecasts exist in terms of the increase or decrease of migration and what possible results these indicators can bring to developed and developing countries.

1. Migration processes, beginnings and causative factors

1.1 Migration, beginnings, main factors

Population migration is quite a complex and diverse process, migration can be determined by various motives. Citizens of different countries decide to leave the city, region, country for different reasons, the most common and powerful factor of migration in the world is the deterioration of the economic and social living standards, in the case of some countries, the indicators and statistics of migration deteriorate periodically because they are unable to improve the economic and social conditions. International migration processes literally concern all states, which are manifested by the movement of people. Migration is a way and a solution for people in search of improvement of the quality of life, while migration processes facilitate the exchange of products, money, ideas through universal channels. According to the study, which was conducted in the city of Moniva and studied the causes of migration, the determining, influencing and pushing factors of migration were identified, in other words, pushes and influences, which are explained by the magnitude of economic, social, political, cultural, environmental, health, education, transportation values. Influential in this sense is the economic factor, which is less considered as a push, but is a significant cost-influencing factor in the migration process.

¹ Politically unstable situations, violence, hostilities, confrontations between countries, which have a direct proportional impact on the movement of the population and migration processes, are the determinants of the nature of migration, in particular the driving factor. Such facts are well remembered by history, the first important date is the year 1857, when the Ottoman Empire implemented the reform known as "Tanzimat", history also well remembers the First World War 1914-1918 and the forced displacements caused by it, the refugees who moved from Belgium to Armenia, as well as the French, migration of the population of Italy and Austria Hungary to Turkey. ² Of course, the mass processes of migration continued during the Second World War, many facts of forced displacements are remembered in history, which were in the past and are still ongoing today. In this way, the unstable political environment and confrontations, which are taking place in the form of a war situation, are considered to be the factors that cause migration, in particular, give a forced push. In such situations, the population is focused on self-preservation, this type of migration is sharp, fast and growing in nature, it is not characterized by a slow pace, unlike only economic, social, cultural or educational factors, which gradually and slowly causes the outflow of the population to more developed countries.

Migration and its direction is also determined by the desire to increase income while their income level is very low, for this reason people choose countries with high wages in the labor market, where working in low positions allows earning more money than is possible in the case of working in their native countries. ³ In the case of Africa, migration to northern countries is driven by war, to escape dictatorial regimes, terrorism, famine, and more. The differences between the causes of migration between continents and countries are large, for example the main motivations for migration from Central and East Asian countries are low standards and quality of life. The motives of the population migrating to the territory of Europe are mainly caused by better service, education, income, and improvement of living conditions. According to 2020 UNHCR statistics, the number of international migrants reaches 281 million people, which represents 3.6% of the world population.

¹ Gatrell, P., Refugees and forced migrants during the First World War, *Immigrants & Minorities*, Vol.26 No.1-2, 2008, page.82-110.

² Titan, E., Ghita, S., Covrig, M., Migration Phenomenon: A globalization Effect or a Cpnsequence of poverty? *Procedia-Social and Behavioral Sciences*, Vol.62,2012 page. 367-71.

³ UNHCR, Global Trends forced Displacements In 2020, Denmark, June 18.2020.

From the point of view of research on the nature of migration, the research carried out by the professor of the University of Zeged, Hungary, is important. The method of qualitative analysis was used, with the help of which the natural perceptions and feelings of people were analyzed. 9745 respondents were interviewed under the conditions of the research, the research was carried out in 2019, the respondents were selected according to the snow team. As a result of the research, the contributing factors of migration were identified, which are discussed in the article, the historical character of migration was revealed as a result of significant confrontations and war, and the migrated society speaks about the motives of escaping from conflicts, violence, oppression of human rights, environmental degradation, economic and social hardship. The rights of migrants are also mentioned among the legal laws that take care of the rights of international migrants (International Convention for the Protection of Migrant Workers and Members of Their Families (ICRMW)). The convention equally applies to and protects temporary and undocumented, illegal immigrants. States are obliged to protect the rights of migrants in accordance with international law, and at the same time they must control those who wish to cross and leave the country's borders and their rights.

From the point of view of protection of rights, the rights of refugees are also important. Refugees are people who are persecuted because of race, religion, nationality, membership of a particular social group or political opinion, are outside the country's borders and need asylum. The rights of refugees are spelled out in the 1967 Protocol to the Refugee Convention. Protection of their rights means protection of the right to life, protection from torture, cruel, barbaric, violent and harsh treatment.⁴ Protection of the rights of legal or illegal migrants, refugees and stateless persons are the most important parts of the convention, the purpose of the convention is to create a safe, non-discriminatory environment for stateless persons, to take care of their rights to have a defined status. Any state must ensure the protection and monitoring of migrants' rights, security, very often immigrants face obstacles, including harsh working conditions in the service environment, inconsistency of living conditions, low pay rate compared to other resident citizens, as well as problems in obtaining various necessary services and controlling costs. part. How correct is it for immigrants to receive, for example, double the cost of health care? How important is the protection of labor rights of immigrants in foreign countries? Are all listed stages sufficiently controlled?

The results of the research, which was carried out in 2019, identified the causes of migration by region, as well as the main directions of migration on one continent. In the case of the African region, there are frequent examples of migration from one region to another, for example from West and Central Africa to North Africa (1471 respondents), from East Africa to North Africa (657 respondents), from East Africa to Europe, and the USA.⁵ The causes of migration of the African population are violence and lack of security system, lack of human rights, economic factor, poverty of social services, emigration processes are also caused by the fact that everyone around them leaves the country and they themselves come to the decision to leave the country.

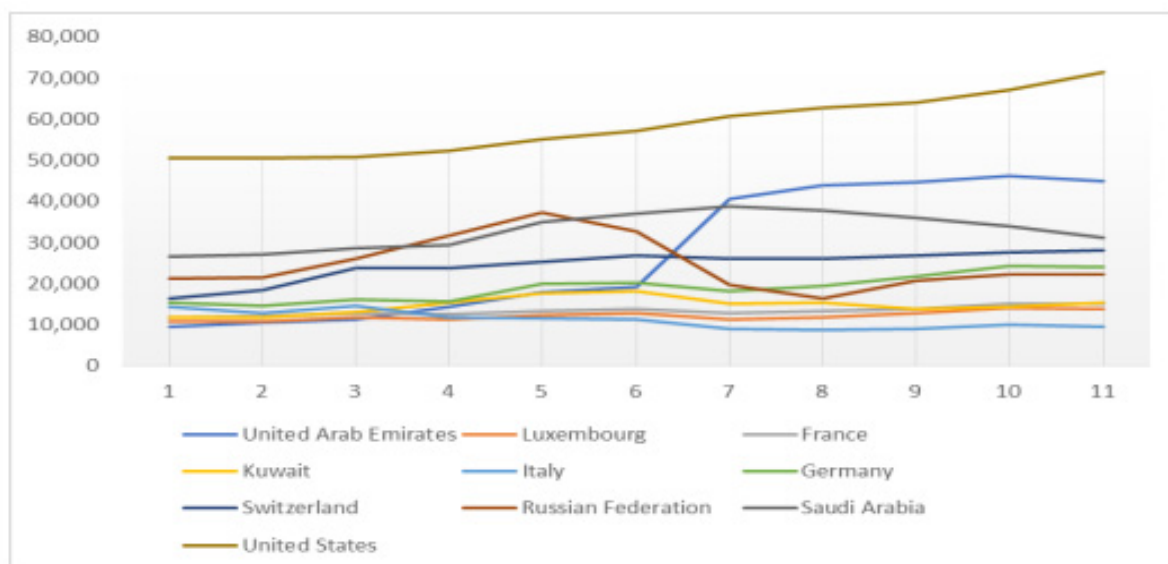
⁴ Bosniak, L. S., Human Rights, State Sovereignty and protection of undocumented migrants under the international migrant workers convention, *International Migration Review* Vol.25 No.4, page.737.

⁵ Mohammed Thoriq Bahri, *Understanding the pattern of international Migration: Challenges in hman rights protection.*

West/Central African to North Africa	Violence and General Insecurity	7.3	East Africa to Southern Africa	Violence and General Insecurity	60.1
	Lack of Rights	30.7		Lack of Rights	33.5
	Economic Reason	94.8		Economic Reason	59.1
	Personal/Family Reason	22.4		Personal/Family Reason	28.0
	Lack of Social Services/Poorly Governed	37.2		Lack of Social Services/Poorly Governed	8.8
	Everybody Around me Was Leaving	42.2		Everybody Around me Was Leaving	3.8
	Environmental Factors	2.3		Environmental Factors	1.5
East Africa to North Africa	Violence and General Insecurity	61.5	East Africa to Europe	Violence and General Insecurity	54.4
	Lack of Rights	60.7		Lack of Rights	82.9
	Economic Reason	62.3		Economic Reason	17.4
	Personal/Family Reason	36.6		Personal/Family Reason	5.2
	Lack of Social Services/Poorly Governed	30.1			
	Everybody Around me Was Leaving	4.4			
	Environmental Factors	0.6			

In the case of South America, the population flows to Canada, the main motives being to find a job and improve income. In order to improve the economic situation, the population also emigrates from Central Europe. Also important are the results of Kleve, which describes migration processes in Central, East and South Asia. Population migrates from Middle East Asia to South Asia (1007 respondents) from Bangladesh to Malaysia (333 respondents). The leading reasons for migration and emigration are violence and the lack of a central security system, 62.7%, personal and family goals 45.9%, the leading reasons for migration from Middle East Asia to South East Asia are violence and problems of the general security system, 77.1%, as well as human rights Defects 33.9%.

The international migration view is also important, according to which the target countries of the highest immigration flow are America, Saudi Arabia, Russia, Switzerland, Germany, Italy, Kuwait, France, Luxembourg, and the United Arab Emirates. And the countries from which most emigrants leave their homeland: India, China, Mexico, Philippines, France, Egypt, Nigeria, Pakistan, Bangladesh and Germany.



⁶ Mohammed Thoriq Bahri, Understanding the pattern of international Migration: Challenges in human rights protection.

⁷ OCDE, International Migration Outlook: Annual Report, International Migration, 2006, page.1-330,

2. Human rights and migration

The most important part of human rights is equality, regardless of differences, different skin color, sex, religious belief, ethnic origin or race, people are protected by law and enjoy all rights, the essence of which is related to freedom of life and opinion. As we know, the lack of freedom of speech can be the basis for people to leave their place of residence, the country, in such conditions of life when a citizen cannot express his political, religious will, views and is limited due to the shortcomings or weakness of the society or human rights protection system, he may make a decision to leave the country. In general, in order for a person to fully experience life, he needs freedom, a stable and satisfactory standard of living, security and a place in society. In Asian countries, where human rights and women's rights are systematically violated due to strict religious rules and legislation built on traditions, immature living conditions are created, as evidenced by the recent protests in the state of Iran. In many cases, when we talk about the legal shortcomings of human rights, we come to the point that the civil constitution is the most adapted to these rights, in Islamic states, the legislation based on traditions and religious rules restricts the rights of people, especially women, and is a contributing factor to migration movements. On the other hand, the continuation of the post-migration problem in the human rights section is the insecurity of immigrant rights. The security and protection of rights part improves legal employment rates, political and cultural evolution. Okon (2018) sees human rights as rights given to humans by God. It is not allowed to ignore and reclassify human rights in modern conditions when the main and primary concern of any state should be the protection of individual and collective rights.⁸

According to the 2014 Summary Report of the International Organization for Migration, a very high rate of migration in terms of outflow of citizens was recorded in Nigeria between 1990–2013, from 465,932 to 1,030,322. From 1990 to 2010, the rate increased to 56.7%. Destinations are especially important, the majority of Nigerians would go to the United States of America, the reason being the working and living conditions there and the quality of protection of the rights of immigrants, this is the main contributing factor to immigrating, starting employment or studying in America.

Basic human rights such as:

- Right to live,
- the right to personal freedom,
- Right to religious freedom,
- the right to move,
- the right to a fair trial,
- Freedom of speech and expression of opinion.
- Right to assembly and association⁹

Immigrant rights that are often violated or ignored include:

- Right to live;
- the right to personal freedom;
- Right to religious freedom;
- the right to move;
- the right to a fair trial;
- freedom of expression of speech and opinion;
- the right to assemble and unite;

In fact, all of the listed human rights points are valid and need to be protected, the right to life can be broken down into several important points:

- the right not to be killed;
- The right not to be killed unjustly;
- The right to have a peaceful life;

⁸ Okon, G, B (2018). Media and national development. Course lecture note at Department of english and Communication Arts. Ignatius Ajuru University of Education.

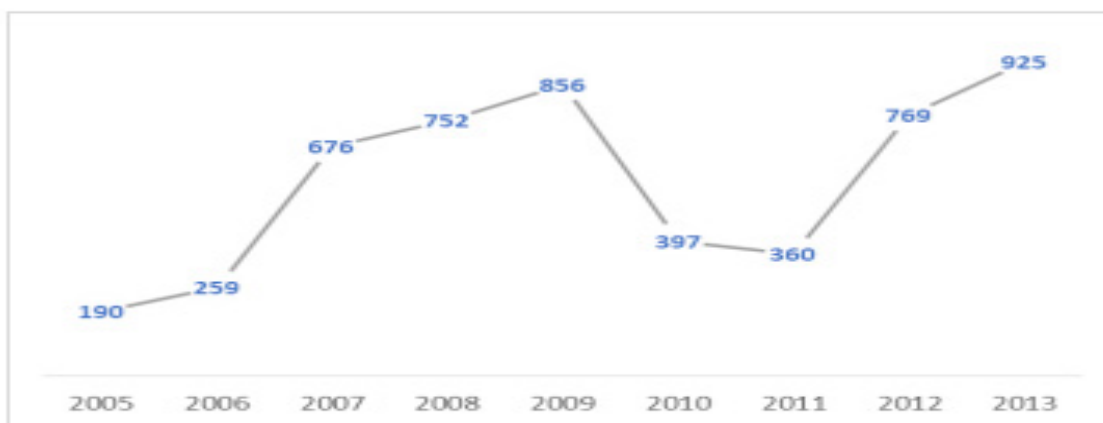
⁹ European Convention on Human Rights, Articles I-X, 10.1950.

Among the human rights, the right to life is considered as a basic right, like food, clothing, medical care and others. There are cases in the world when immigrants are killed or physically harmed for no reason, in some cases the facts of the crime remain unnoticed and are not investigated by the relevant authorities.

- The fifth article of human rights talks about the right to personal freedom and security, no one has the right to violate a person's personal freedom and endanger his life.
- When immigrants are arrested, the state is obliged to inform them in a language they understand about their rights, the reasons for their arrest, as well as the charges brought against them.
- In case of arrest, immigrants have the same rights as citizens of the country to receive all services in full,
- To benefit from the free assistance of an interpreter if he cannot understand or speak the language used in court.

Freedom of religious belief, the right to be a follower of any belief, has an important place among the rights of a person and, therefore, of immigrants, very often society excludes people who have a religious belief that is significantly different from them. A society with a low acceptance culture will often not be very positive towards people of different beliefs, especially if they are newcomers, job seekers and immigrants. The state is obliged to prevent any illegal resistance or attempt to suppress rights and to support immigrants, to ensure their safety.

According to Human Rights, Trafficking Statistics 2017, 24.9 million migrants were enslaved, 16 million (64%) were used as labor, 4.8 million (19%) were sold into sex slavery, and 4.1 million (17%) were forced into forced labor. . The facts of terrorism and trafficking are still relevant in the territory of South East Asia, the statistics of which are characterized by an increasing rate in the period of 2011-2013.



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The aspect of hearing and fair treatment is also important, in particular, the Nigerian police often illegally arrest citizens without valid reasons and criminal facts, and it is also a problem to try them by lynching for certain crimes, theft and others. Such countries, where constitutional, security, human rights systems are violated, law enforcement agencies are criminalized, it is difficult to talk about ways to reduce migration flows. Such type of states do not have development, as well as the population living there, considering these problems, they try to help themselves and turn to America and European countries for asylum. An important part of the rights of immigrants, as well as a part of general human rights, is the right to join organizations of various nature and importance, these organizations can be of a political nature, regardless of whether people cause problems with the state due to personal political opinions. Organizations of this type may also have a religious character. Moving in Nigeria is a particular problem, in fact this process is constantly associated with fear for the locals, not to mention freedom of speech and free will of expression. All existing factors are an important part of the rights of potential or existing immigrants and their provision is the prerogative of states.

There are frequent xenophobic and discriminatory attitudes towards immigrants from the local population of different countries, xenophobic, which refers to their fears in terms of losing national

¹⁰ Human Rights First, Human Trafficking by the numbers, Human rights first trafficking by number report 2017, accessed June 17, 2022.

values, customs and rules, and discriminatory facts, which imply the oppression and exclusion of immigrants due to their different ethnic origin, Because of skin color, sexual orientation, religious beliefs, cultural differences and other characteristics, often local people do not have tolerant attitudes and acceptance towards immigrants, refugees.

Although human rights legislation should protect everyone equally regardless of citizenship, permanent residence, emigration or refugee status, its deficient nature and inadequate seriousness is still a problem, the contrast in attitudes when the rights of a permanent citizen of a country, a local resident and an emigrant are violated, This is discussed in the Convention on the Human Rights of Immigrants, which was issued by the International Organization for Migration. ¹¹ „Migrants have the same rights under international human rights principles as everyone else regardless of their status in the country, including the right to security.“¹²

In the shortcomings of the process of adoption and implementation of the standards for the protection of immigrants' rights, the changes made by the states in the last ten years are discussed, only 16 states have accepted and ratified the 1990 convention, which is not enough to improve the overall situation. The adoption of this convention is equally important for all states in terms of ensuring the protection of human rights. In fact, progress is very slow. The fact that the states do not agree to the adoption and ratification of the Convention shows an indifferent attitude towards the recognition and protection of the rights of immigrants. However, it must be noted that the problem was not only in the weakness of interest, but in the activities promoting the dissemination of the Convention, in particular, the dissemination of the 1990 Convention agreement, conditions, and data was not carried out perfectly. Despite the rather high number of secretaries, volunteers and employees working in international organizations, as well as in the manual of the International Organization for Migration, where the shortcomings of the convention are discussed, it is said that even the human rights convention agreement could not be obtained properly, only photocopies were difficult to access. However, until 2001, no specific responsible person was designated who would carry out the delivery and distribution to the relevant international organizations of the Convention. Accordingly, European diplomats and government representatives expressed dissatisfaction with the 1990 Convention at conferences, international meetings, and discussions:

The convention was unrealized, impractical in terms of international standards as too ambitious and detailed;

The convention is irrelevant because the states have not expressed their desire to recognize and accept it;

There are many facts of gross violations of human rights. In 2000, white policemen in South Africa raped defenseless black citizens. This fact was evaluated by the international mass media as "the worst racism and violence pornography". This fact revealed the existence of racism problems in South Africa, and similar facts are Evidence of the existence of xenophobia. The interesting part about this fact is also that the three men who were assaulted were from Mozambique as illegal migrants, at that time the police were in flagrant violation of the European Convention, according to which no warrantless, warrantless arrests were allowed, although the police arrested illegal migrants and deported them. The South African government deported 600,000 migrants. In the conditions of the SAMP-South Africa field project research, it was determined that migrants are provided with low security conditions in various work environments where they have to perform work physically, on farms, on construction sites and others.¹³

According to the research carried out by the South African Material Project (SAMP), in which 500 respondents, citizens of Zimbabwe, Namibia, Mozambique and Lesotho were interviewed, open-ended questions were used for the research, through this method, the nature of verbal and physical violence from authorities and citizens was analyzed. The African Commission on Human Rights concluded:

¹¹ International organization for migration- The human rights of migrants, P 22.

¹² David S Weissbrodt and Clay Collins, The Human Rights of Stateless Persons, Human Rights Quarterly, Vol.28 No.1, 2006, page.245-76.

¹³ International organization for migration- The human rights of migrants, P 108.

"It is clear that just being black is not enough to protect yourself from racism, especially if you are from neighboring African countries, you can be a victim of the same discrimination and abuse or worse."

It is important to consider some of the results of the study, where the respondents' attitudes towards refugees and stateless migrants are clearly visible. When asked whether immigrants should have the right to freedom of movement and expression, South African respondents think that illegal immigrants should have this right the least at 2.8% and citizens almost always at 86.4%. Should they provide protection and security for illegal immigrants? According to respondents, illegal immigrants should be least protected. The smallest number of respondents support illegals in terms of provision of social services and provision of their security by the police, 11.4% and 8.9%.

In the second part of the survey, which deals with refugees, kindness and tolerance are also less visible, a very small number of respondents think that security and social services should be least accessible to them. The evaluation of communication with non-citizens is also negative, in fact 60% of the respondents choose not to communicate with them.

SOUTH AFRICAN ATTITUDES TO RIGHTS FOR CITIZENS AND MIGRANTS

	Always	Sometimes	Never
Should be granted right to freedom of speech and movement¹			
Citizens	86.4	13.1	0.5
Temporary workers	12.8	43.3	43.7
Illegal immigrants	2.8	12.7	84.4
Should be granted right to legal protection²			
Citizens	90.8	8.7	0.5
Temporary workers	23.9	52.7	23.2
Illegal immigrants	8.3	29.2	62.2
Should be granted right to police protection³			
Citizens	92.6	6.7	0.6
Temporary workers	30.1	45.6	24.1
Illegal immigrants	11.4	27.1	60.9
Should be granted right to social services⁴			
Citizens	96.2	3.8	0
Temporary workers	29.7	45.6	24.6
Illegal immigrants	8.9	28.3	62.7

1. Literally "Depends on the circumstances".

TABLE 10
SOUTH AFRICAN ATTITUDES TO RIGHTS FOR REFUGEES

	Always	Sometimes ¹	Never
Should be granted right to freedom of speech and movement	3.3	27.3	69.3
Should be granted right to legal protection ²	13.3	43.5	42.8
Should be granted right to police protection ³	16.7	40.7	42.2
Should be granted right to social services ⁴	16.9	40.6	42.4

PERSONAL CONTACT WITH NON-CITIZENS

	1998	1999
Great deal of contact	4	8
Some contact	15	29
Hardly any contact	20	16
No contact	60	44

Source: 1998 and 1999, SAMP (South Africa Survey).

2.1 European migration projections

Forecasts developed by the European Political Laboratory, published in Luxembourg in 2018, discuss possible scenarios for the development of migration, predict the ways that will promote immigration for developed countries, and for developing or troubled countries, increase the number of citizens who emigrate, who want to leave the country, Europe has recently transformed from an emigration region to an immigration region precisely because the working conditions, the labor market, the quality of education, the background and condition of social economic life have improved, similarly, the solution for low and medium development countries in terms of reducing migration rates is to create better housing, labor, social, educational conditions in the part.

Whether free, visa-free, or open channels, greater access to transportation, flights, and other innovations tend to reduce migration flows, so states should think carefully before developing more open migration systems, as this decision may stimulate an outflow of able-bodied citizens. Once the channels are opened, it is very difficult to regulate and stop the flows and migration rates. Unplanned implementation of this reform can produce unproductive results.

Conclusions

The foundation of the migration processes was laid by the "Tanzimat" reform, which made possible the entry of religiously displaced persons and non-displaced persons into the territory of Turkey, while the rights of all minorities were protected within the framework of this reform. Mass displacements are also related to the First and Second World Wars, which were initially caused by war situations, in the case of Africa, migration between regions is caused by various reasons, including poverty, insecurity of human rights, dangerous environment and violence. The reasons for migration can be the desire to get an education, trying to escape from poverty, meeting personal needs, trying to escape from conflict and violent environment and so on.

Taking into account the data from different continents of the world, the most problematic zones are the eastern and southern zones of the African continent, compared to all other factors, the statistics are aggravated and the unstable, dangerous environment is growing at a rapid pace, which can lead to a massive outflow of the population and emptying the country of able-bodied citizens. Based on the discussed and analyzed information, we can conclude:

- The problem of human rights protection is not only at the level of states and institutions, the problem is not created only by their inaction or indifference, the problem is created by the citizens' lack of awareness of human rights, the results of which were confirmed in the South African study.
- The most severe forms of human rights violations in the civilized world are found in the form of trafficking, unfortunately it cannot be eliminated, the state needs to take much stricter measures to fight against trafficking, as well as strict punitive measures.
- According to forecasts developed by the European Political Laboratory, the introduction of open migration systems may bring different results to developed and developing states. In developed countries, the risk factor that a massive outflow of citizens will follow simplified visa regimes is small, while in developing countries, it may lead to the flow of continuous flows of migration, which the state cannot regulate or stop, therefore the state will be at the front of a critical situation, in terms of emptying the country of the most capable and powerful flows. A state that cannot provide its citizens with a suitable living environment, social economic background, education and health care system, cannot provide a security system without pre-determined forecasts should not implement this type of policy.
- The state should not only take care of the formal implementation of the international rights convention in the legislation, but also develop a strict control system, take periodic measures in terms of updating the security mechanism, study the statistics of human rights violations and accordingly determine those weak points that need to be strengthened.

- Due to the fact that the process of understanding human rights starts from an early age and its realization is directly related to education, it is necessary to more actively introduce the process of understanding human rights in the educational system of the school.

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THE SCOPE OF THE COURT'S SELF-INITIATIVE IN ADMINISTRATIVE PROCEEDINGS IN REGARDS TO OBTAINING ASYLUM

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Abstract

In modern day countries, including Georgia, the issue of migration poses an important challenge, the legal regulation of which depends on both state bodies and courts. The 1951 Convention "Relating to the Status of Refugees" is one of the mechanisms for realizing fundamental human rights and freedoms provided by the Universal Declaration of Human Rights. An asylum-seeker who enters Georgia for the purpose of obtaining refugee/humanitarian status has certain rights and obligations, on the basis of which the status is either granted or denied. The issue of granting refugee/humanitarian status may include different (political, religious, etc.) grounds. Ultimately, the primary link that determines the legal status of an asylum seeker is the court. It carries out procedural actions in a way that does not violate both the interests of the state and the rights of the asylum seeker.

Taking into consideration the aspects of administrative proceedings, the court is not limited both in terms of examining the evidence presented by the parties, as well as in regards to its own initiative to investigate the scope of a person's claim and make a decision. It is also important that the court's self-initiative includes not only a formally established standard, but also the ability, if necessary, to request evidence at its own discretion in order to establish the objective truth in the case. However, on certain matters, depending on the specific nature of the case, the court's ability may be limited. Finally, taking into account the distribution of functions of the court and the administrative body, there is a limit on the basis of which it is possible to achieve an absolute result in the aspect of protecting the rights of the asylum seeker.

Key words: asylum seeker, court, refugee/humanitarian status, self-initiative.

Introduction

Determining the legal status of an asylum seeker is one of the most pressing issues. According to the case law of the European Court of Human Rights, in order for a state to be obliged not to allow the return of a foreign national to a country where he or she may become a victim of the acts provided for in Article 3 of the Convention, the reality of the threat must be proven and the receiving state must not be able to eliminate this threat by providing appropriate protection.¹ Based on the Theory of Universality, human rights should be protected anywhere in the world.² An asylum seeker is obligated to go through the appropriate procedure in order to obtain refugee/humanitarian status.³ In the event that the relevant administrative body (the Migration Department of the Ministry of Internal Affairs) does not satisfy the asylum seeker's request, the asylum seeker has the right to apply to the court within the framework of administrative proceedings.⁴ In this respect, both the legal aspects of the case review and the scope of the court's self-initiative during the case investigation process are of interest.

¹ Decision of the Grand Chamber of the European Court of Human Rights on the case N27765/09, *Hirsi Jamaa and others v. Italy* February 23, 2012, paragraph 120.

² Phirtskhalashvili, A., *The Theory of Universality of Human Rights*, Scientific Journal - Justice and Law, #2(41), 2014, p. 74.

³ Law of Georgia "On International Protection", December 15, 2016.

⁴ Article 21²⁴, Administrative Procedure Code of Georgia.

Court proceedings for refugee or humanitarian status have specific elements (eg, expedited hearings, mandatory appointment of a lawyer, provision of an interpreter, different time limits for appealing the decision, etc.). The court, within its discretion, investigates and evaluates the legal and factual (eg, information about the country of origin) situation of asylum seekers and makes a decision accordingly.⁵

The article will discuss the current legal practice related to the granting of asylum, which includes both procedural matters in the court and the inquisitiveness of the judge. In particular, the following will be presented:

- the procedural rights of the asylum seeker, which are ensured by the court;
- the issue of gathering evidence by the court - what kind of evidence the court collects on its own initiative;
- The matter of the examination of evidence by the court - ultimately, what kind of result does the scope of the court's self-initiative help to achieve and how does it affect the state of affairs of the asylum seeker.

Thus, the approach of the court, both from the point of view of the application of imperatively established legal norms, and from the principle of inquisitorial process, is of crucial importance in terms of granting status to the asylum seeker.

1. Legal rights of an asylum seeker

1.1. *The right to appeal to an administrative body*

A foreign citizen who leaves his/her country and enters Georgia for the purpose of being granted refugee/humanitarian status must, first and foremost, meet the general criteria set by law.⁶ This means that he/she must have a reasonable suspicion that he/she will be a victim of persecution in his/her country and, based on fear, must be unwilling or unable to return to his/her country of origin, or he/she may not meet the conditions for refugee status, but would be at risk of serious harm if returned to his/her country of origin.⁷ If the migrant believes that he/she is under such circumstances, he/she applies to the state body - the Migration Department of the Ministry of Internal Affairs of Georgia, requesting the granting of refugee/humanitarian status.⁸ If the administrative body determines in the course of its proceedings that the person should not be granted refugee or humanitarian status, the asylum seeker may initiate legal proceedings, which he/she is not restricted from.⁹ Furthermore, at the current stage of the proceedings, his/her expulsion from Georgia is not allowed.¹⁰ During his/her stay in Georgia, the person enjoys the social benefits that can be utilized depending on the legislation.¹¹

1.2. Right to apply to court

After the asylum-seeker receives an act issued by an administrative body, refusing to grant refugee or humanitarian status, he/she has the right to apply to the court and request a review of the legality of the appealed act, as well as a court order for the administrative body to grant refugee/humanitarian status.

The universally recognized norms governing the disputed issue in the case under consideration are regulated in the 1951 UN Convention "Relating to the Status of Refugees", which Georgia joined by the year 1999, May 28 N1996 -II resolution of the Parliament of Georgia.

At the first stage, the court determines the procedural rights of the asylum seeker, which are regulated before the final consideration of the case. If the person does not have a lawyer, the court, on its own

⁵ Decision of the European Court of Human Rights on the case N37801/97 "Suominen v. Finland", July 24, 2003, paragraph 34; Decision of the European Court of Human Rights on the case N16034/90 "Van de Hurk v. the Netherlands", April 19, 1994, Paragraph 61.

⁶ Article 6, "Law of Georgia on International Protection" December 15, 2016.

⁷ Article 15, "Law of Georgia on International Protection" December 15, 2016.

⁸ Order of the Minister of Internal Affairs of Georgia "On Approval of the Asylum Procedure", April 6, 2020.

⁹ Article 31, Constitution of Georgia, August 24, 1995.

¹⁰ Field, O., (with the assistance of Alice Edwards) Alternatives to Detention of Asylum Seekers and Refugees, Alternatives to Detention of Asylum Seekers and Refugees (April 2006), p. 41-45.

¹¹ Article 33, Constitution of Georgia, August 24, 1995.

initiative, appoints a lawyer for the claimant at the expense of the state.¹² It is important to note that the state duty fee is not paid for such type of lawsuits. Thus, the asylum seeker has procedural privileges in certain matters, which are enforced by the court. In connection with this category of disputes, the case is reviewed no later than two months after the claim is received in the proceedings,¹³ although the case may be considered until the court has fully investigated all the circumstances related to the case. At any stage of proceedings, at court hearings, the asylum seeker is provided with an interpreter in a language he/she understands. Also, the procedure for submitting and appealing the decision is specific. After the court makes a final decision, the asylum seeker must be provided with the fully translated document in a language he/she understands. After that, the person has the right to appeal to a higher court instance (in case of partial satisfaction of the decision or rejection to satisfy) within 15 days.¹⁴ In administrative proceedings, such a maximum time limit for appealing a decision is characteristic only of similar types of disputes. It should also be noted that if the asylum seeker cannot receive a decision translated into their language (via mail or in person), the court does not apply the rule of delivering the decision to him/her through public publication. The aforementioned serves to protect the asylum seeker in order to prevent the dissemination of information about him/her in his/her country of origin. In addition, until the final decision of the court enters into legal force, the asylum seeker is considered to be in Georgia legally and has the right to enjoy other social and legal benefits, unless the person repeatedly, or due to newly discovered circumstances, does not apply to the administrative body for granting status.

In terms of comparison, it should be noted that a foreigner who enters Georgia in order to obtain the right of residence does not enjoy all the procedural privileges listed above, except for the presence of an interpreter at court sessions.¹⁵ Therefore, as it was pointed out, the existing administrative proceedings against the refugee/humanitarian status seeker are characterized by specificity and exceptionality.

2. The scope of the court's self-initiative

The scope of the judge's self-initiative in administrative proceedings is determined by the principle of inquisitorial process.¹⁶ This implies that along with the asylum seeker's right to present to the court the evidence he/she deems necessary, the court can also assist him/her with obtaining and examining evidence. At the stage of court proceedings, all parties participating in the process (plaintiff and defendant) are obliged to present to the court the evidence available to them, to give explanations and correct information. Thus, the scope of the court's self-initiative does not exempt the parties from actively using the adversarial principle.

2.1. Request of evidence from the administrative body by the court

After accepting the lawsuit, the court instructs the defendant-administrative body to present the materials of the administrative proceedings at its disposal. The materials of the administrative proceedings include all the evidence that has been gathered against the asylum seeker;¹⁷ e.g. a questionnaire, a record of an interview with an asylum seeker¹⁸ detailing the reasons why he/she left his/her country of origin, whether he/she was persecuted or not, etc. The protocol of the interview reflects the information provided by the asylum seeker. It should be noted that based on the current practice, persecution mainly entails persecution for religious and political beliefs. In addition, the administrative body presents as evidence the conclusion drawn up by the Status Determination Unit of the Division of International Protection Affairs, which reflects the arguments that the claimant based the request on; evaluation of the aforementioned arguments by the Division; to evaluate the compliance of the request of the interested party with the established criteria in accordance with the 1951 Geneva Convention; Reasoning about the absence of the well-founded fear of persecution against the interested party. According to the recommendation outlined in the conclusion, the Status Determination Unit of the Division of

¹² Article 5, Clause 23, Law of Georgia "On Legal Aid", June 19, 2007.

¹³ Article 21²⁵, Part One, Administrative Procedure Code of Georgia.

¹⁴ Article 21²⁵, Part Two, Administrative Procedure Code of Georgia.

¹⁵ Decision of the Administrative Affairs Board of Tbilisi City Court on the case N3/6427-21, December 17, 2021.

¹⁶ Article 4, Administrative Procedure Code of Georgia.

¹⁷ Article 5, Regulations of the Migration Department of the Ministry of Internal Affairs of Georgia, approved by the order N588 of the Minister of Internal Affairs of Georgia on August 6, 2014.

¹⁸ Article 35, paragraph 2, Law of Georgia "On International Protection", December 15, 2016.

International Protection considers whether the asylum seeker meets the criteria defined by Article 1A(2) of the 1951 Geneva Convention and Articles 15 and 19 of the Law of Georgia "On International Protection" regarding the process of granting refugee or humanitarian status. The court also requests information about the country of origin to determine whether the threat of persecution indicated by the asylum seeker in the event of his/her return to the country of origin is real or not.

Taking into account that the consideration of migration cases has specific characteristics, which are based not only on facts, but also on the information provided by the asylum seeker, the court compares the explanation given by the claimant at the court session and the circumstances described in the interview in the administrative body, in order to clarify whether the claimant's providing false information and attempting to mislead the court. In this regard, the court reserves a special discretion to verify all the evidence and facts within the framework of its own initiative, to additionally request other evidence that it deems necessary and important for the thorough investigation of the case.¹⁹

2.2. Request for confidential information by the court

A foreign person who is seeking asylum in Georgia, within the framework of the above-mentioned procedures, the State Security Service checks whether the person's movement to Georgia or granting him/her refugee/humanitarian status poses a threat to the state. Such information is of a confidential nature and its study is carried out in compliance with special rules. In the event that the refusal of the administrative body to grant the refugee/humanitarian status is based on the conclusion issued by the State Security Service regarding the inexpediency of the asylum seeker's stay in Georgia, the court has the right to request confidential information, at the request of the party or on its own initiative, to determine whether the person is a threat to the state.²⁰ At the stage of the examination, the court examines the evidence presented in a closed session, without any party present during it.²¹ After examining the said information, the court comes to inner conviction in regards to making a decision.²² Notably, the aforementioned information is not disclosed to the parties, including the asylum seeker to whom the information pertains. Also, this information is not reflected in the court's decision. After examining classified information and other circumstances, the court makes a decision, which may include granting, denying, or instructing the administrative body to re-examine the evidence and factual circumstances.

Given that the information sought by the State against a person is confidential, the asylum seeker's only means of examination and investigation of it is the court, in which the asylum seeker must have confidence that the decision made against him/her will be fair.²³ If the court does not approve the claim, the asylum seeker may, using the same rights granted to him/her, appeal the decision to the Court of Appeals. On the basis of this principle, the asylum seeker can employ two kinds of control mechanisms; he/she has the ability to verify whether the information about him/her has been fully studied and ensure that he/she has not become a victim of injustice.²⁴

Based on all of the above, an asylum seeker who is refused refugee/humanitarian status in Georgia by the recommendation issued by the State Security Service, has the right to verify the relevance of the information about him/her through the court. Additionally, the court reserves the right to request this evidence on its own initiative and to assess the adequacy of the facts that constitute as a basis for the claimed inadvisability of a person's stay in Georgia. It is not necessary for the party to request the aforementioned information at the court session, as in accordance with the principle of inquisitorial

¹⁹ Decision of the European Court of Human Rights on the case N21522/93 "Georgiadis v. Greece", May 29, 1997. Paragraph 43.

²⁰ Decision of the European Court of Human Rights in the case N8139/09 "Othman (Abu Catada) v. The United Kingdom", 9 May 2012. Paragraphs 183-185.

²¹ Article 201, Part One, Administrative Procedure Code of Georgia; Decisions of the Supreme Court of Georgia on administrative cases, N7, Tbilisi, 2021, p. 14-20.

²² Judgment of the European Court of Human Rights on the case N37201/06 "Saadi v. Italy", February 28, 2008. Paragraphs 125 and 138.

²³ Gegenava, D., Some issues of justification of the decision of the Constitutional Court of Georgia, in the book: Giorgi Kverenchkhiladze 50, d. Edited by Gegenava, Tbilisi, 2022, 144-152.

²⁴ Ruling of the Administrative Affairs Chamber of the Tbilisi Court of Appeal on case N3b/374-22, March 29, 2022.

process, the judge can offer the party to request such information on its own initiative or request it independently.²⁵

Noteworthy is the kind of situation when the court deems it necessary to request confidential information, despite the asylum seeker not consenting to the court receiving such information, or when the court requests confidential information without hearing the parties' positions. On the one hand, the self-initiative is aimed towards giving the court an ability to fully examine the case even without the parties' motion. However, in this case in particular, it concerns the legal status of an asylum seeker who, according to his/her explanation, left his/her country of origin due to persecution. He/she may not want to share personal information about him/herself with anyone, even with the court. Therefore, the scope of the court's self-initiative, when it concerns the kind of evidence that belongs to the category of confidential information about the migrant, should require the consent of such a person, in accordance with a strictly defined rule, even though this information cannot be made available to the plaintiff.

3. Problematic aspects revealed during the consideration of the case in court

In administrative proceedings, when considering the case for granting refugee/humanitarian status in court, first of all, it is important for the court to evaluate the administrative materials presented by the administrative body. The court examines the presented evidence thoroughly and in great detail. Checking the legality of the appealed administrative-legal act does not only include studying its formal part. A legally correct decision does not mean fair in and of itself. Thus, in the process of consideration of the case, the court is actively involved in the detailed examination of all evidence or issues. The explanation given by the asylum seeker at the court hearing, based not only on the situation in his/her country of origin, but also on the fear of persecution, may be true or false information in individual cases.

The United Nations High Commissioner for Refugees (hereinafter - UNHCR)²⁶ in a report issued in December 16, 1998, on burdens and standards of proof in refugee claims, states that "credibility is established when the applicant has presented a claim that is logical and convincing, does not contradict the generally known facts, is balanced and it is possible to be considered well founded and credible".

Therefore, "reasonable fear" consists of subjective and objective elements. The attitude of the applicant must be supported by objective circumstances and relevant evidence. The following factors are taken into account when evaluating reliability:

- Relevance and sufficient details;
- Relevance of oral or written information presented by the applicant;
- Relevance of the information obtained about the country of origin;
- Credibility.

In general, when examining the applicant's credibility, the court takes into account such factors as the validity of the material facts presented during the proceedings and the consistency/compatibility of the facts presented by the asylum seeker (questionnaire, interview material). E.g. an asylum seeker applies for refugee/humanitarian status on the basis that he/she is being persecuted on religious grounds and believes that if he/she returns to his/her country of origin, his/her life will be in danger because of his/her change of faith. For clarity, if the asylum seeker's country of origin is Egypt, which is an Islamic Republic, and the asylum seeker indicates that he/she has converted to Christianity and has a fear that he/she may be killed if he/she returns to his/her homeland,²⁷ or the person requests asylum in Georgia on the basis that in the country of origin he/she was a member of an opposing political party and was being persecuted because of that, subjectively, the fear may be real, however, on the other hand, the

²⁵ Kopaleishvili, M., Skhirtladze, Nino, Kardava, E., Turava, P., Handbook of administrative procedural law, Tbilisi, 2008, p. 244-246.

²⁶ Established in 1950 by General Assembly Resolution No. 319 (IV) of December 3, 1949, and its mandate provides for the protection of refugees and internally displaced persons and the promotion of States in the direction of long-term solutions to the problems of these people.

²⁷ Egypt. The Muslim Brotherhood: Ideology and a Brief History of the Organization. March, 2018 <http://coimra.gov.ge/ka/2018/03/05/%E1%83%94%E1%83%92%E1%83%95%E1%83%98%E1%83%9E%E1%83%A2%E1%83%94-%E1%83%9B%E1%83%A3%E1%83%A1%E1%83%9A%E1%83%98%E1%83%9B%E1%83%97%E1%83%90-%E1%83%A1%E1%83%90%E1%83%AB%E1%83%9B%E1%83%9D-%E1%83%9D/> [L.s. 01.03.2023].

asylum seeker is obligated to present evidence to prove that he/she is being persecuted or may be persecuted in the future.²⁸ Thus, subjective fear must be supported by objective, real evidence.

Furthermore, the process of examining the materials of administrative proceedings by the court is of importance. The judge examines in detail whether the administrative body has missed any evidence evaluation. For example, an asylum seeker who claims that he/she has been subjected to physical violence (e.g. by a family member) because of his/her religious beliefs, and in support of this, presents a health certificate in which a doctor states that the applicant has injuries on his/her body, it is important that the administrative body examines all the evidence provided by the applicant, and the second issue is whether it is considered to be credible or not. Consequently, the court strictly monitors the process of administrative proceedings conducted by the administrative body, so that no important issue is missed or neglected. It should be noted that the scope of the court's self-initiative includes assisting the asylum seeker with checking the activities of the administrative body, the information about it, to request evidence, to listen to the explanations of the parties, and in the rest, the court is bound to carry out certain actions by itself. E.g. if the court considers that the interview of the asylum seeker in the administrative body was conducted incompletely, or any evidence was not examined, the court orders the defendant - administrative body to re-examine the case.

It is also noteworthy that the information obtained about the country of origin is one of the main evidences to highlight the real circumstances of the asylum seeker's request. It is important that the information is obtained from a reliable source and corresponds to the situation in the country of origin at that time. Based on all of the above, the final assessment of granting refugee/humanitarian status to an asylum seeker is made by the court, although the court's discretion alone cannot determine the truth in the case, unless the active will of the parties is revealed, the absence of which will, ultimately, harm the interests of the asylum seeker or the state.

Conclusion

The administrative body - Migration Department of the Ministry of Internal Affairs of Georgia examines the issue of refugee/humanitarian status for an asylum seeker, while the court evaluates the grounds for its refusal, examines the case materials, determines the real circumstances of the asylum seeker's situation within the framework of its own initiative, and only then makes a decision. As it was pointed out, the court is set to protect the balance, so as not to violate the socio-legal rights of the asylum seeker and the state security. Examining the aforementioned issue during court proceedings is quite difficult and requires a lot of effort, however, taking into account the judge's discretion and the principle of inquisitorial process, by which the judge examines the activities of administrative bodies, the violation of the asylum seeker's rights is reduced to a minimum level.

The article highlights the procedural rights that the asylum seeker has at the stage of consideration of the case. In addition, the scope of the court's self-initiative, the mechanisms it can use to secure evidence, verify it and obtain a fair result were unveiled. Moreover, the matter of requesting and evaluating confidential information by the court was assessed.

The following problematic aspects of the case were highlighted:

- Thorough examination of the evidence by the administrative body;
- Determining the credibility of the information provided by the asylum seeker;
- Verification of the credibility of the information about the country of origin of the asylum seeker;
- Effectiveness of examination of the evidence gathered by the court.

Upon analysing the available information, it was revealed that the asylum seeker enjoys privileged rights precisely due to the special nature of his/her status; it is granted as a result of lengthy procedures and a detailed study of the circumstances of the case.

Based on the above, it is important that the decision made by the court directly affects the legal status of the asylum seeker. After the final decision of the court enters into legal force, if the person has no other reason to stay in Georgia, he/she is obliged to leave the country, otherwise he/she will be expelled,

²⁸ Guidelines on the Procedure and Criteria for the Determination of Refugee Status under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, UNHCR, p. 18-25.

which involves returning to the country of origin.²⁹ Consequently, it is the court that has the greatest responsibility to investigate the evidence in the case in detail and to objectively evaluate the circumstances, because if it turns out that the state has wrongly restricted the right to grant refugee/humanitarian status to an asylum seeker in Georgia, not only will that violate the Georgian legislation in relation to migration issues, but also the applicable international treaties.

In conclusion, the court, within its discretion and on the basis of legislation, protects the basic principles provided by the Universal Declaration of Human Rights and Freedoms, thus ensuring the protection of the rights of migrants, not only in terms of legal, but also fair decision-making.

²⁹ Priebe, Stefan, Giacco, Domenico & El-Nagib, Rawda. Public health aspects of mental health among migrants and refugees: a review of the evidence on mental health care for refugees, asylum seekers and irregular migrants in the WHO European Region. World Health Organization. Regional Office for Europe. (2016). p. 18-20. <https://apps.who.int/iris/bitstream/handle/10665/326308/9789289051651-eng.pdf?sequence=3&isAllowed=y>. [L. s. 01.03.2023].

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