

MIGRATION LAW

Immigration And European Solidarity¹

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Abstract

As a result of the intensification of immigration, European policy has evolved in recent years, the field being an open one. The main purpose of the article is to highlight the essential aspects of immigration at European Union level in accordance with the principle of solidarity. Immigration management is a central activity of sovereign states. As in the European Union, the supranational level has contributed to the application of the principle of solidarity. The European Union is at a turning point. The directions adopted at European regional level require an analysis, at the heart of which is the principle of solidarity. Despite the contradictions at the level of the European Union regarding the management of the process of mobility of people, the political agenda develops clear directions, and the official political vision is to encourage the phenomenon of legal migration and discourage illegal migration. The Common Immigration Policy pursues several objectives, that of managing migration flows, treating third-country nationals in an equitable manner, and preventing and combating illegal immigration and trafficking in human beings. Solidarity is a key word in the management of immigration, as all the European Union's objectives in this area require a shared responsibility of all Member States. Thus, cooperation between states is vital. Without cooperation and solidarity the joint project will face difficulties and cannot be implemented effectively. Firmness and solidarity, as well as shared responsibility, are the key words for European policy on managing migration in the European Union.

Keywords: *public law, migration law, shared responsibility, support, policies, obligations.*

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1. Introduction

The granting of asylum is intended to compensate for the lack of individual protection that should be provided by the country of origin. At the international level, the United Nations General Assembly has recognized that "the refugee problem is international in nature" and therefore requires a coordinated global response based on greater solidarity among all nations [1].

In the European Union, solidarity has been raised to the rank of a fundamental value of the legal order at European regional level and recognized as one of the essential principles on which it is based.

The legal and regulatory framework on immigration includes international regulations, as well as principles and best practices. At the same time, its structure includes European and national norms. All this has evolved in recent years, and the tools in this area have been enriched. Obviously, the authorities of national states are obliged to respect in practice the rights granted by law to third-country nationals.

To change its perspective on migration, the European world has mobilized. Given the skyrocketing number of people who have travelled across external borders and arrived in the European Union, there has been a growing concern among governments to find effective solutions. For example, according to data from the European Asylum Support Office, in November 2019 there were 62,670 asylum applications in the European Union [2].

The Court of Justice of the European Union emphasized many years ago that a Member State's deliberate refusal to implement EU law as a "failure of the obligation of solidarity" which "strikes the foundation" of the EU legal order [3].

The migration crisis of recent years has forced the Member States of the Union to cope with and implement new measures to exercise the principle of solidarity. Under these conditions, solidarity means support for the states most affected by immigration. At the same time, the responsibility of all Member States of the European Union is promoted. Thus, solidarity is a concept that brings Member States closer together and at the same time gives legitimacy to joint decisions. Thus the concept of "burden-sharing" appears as a concrete measure of solidarity that must be achieved by sharing risks and costs between partner states in order to achieve a common goal.

2. Immigration and European solidarity

Solidarity has been asserted from the beginning as being at the heart of European policy-making. A unique concept with multiple manifestations, European solidarity can in fact be analysed in terms of the functions it fulfils in European integration, whether it is understood as a process of economic and social integration or as a process and process of legal integration. Solidarity thus

contributes to the conceptual and material framework of the problem of the place of the state in a complex legal order and of social solidarity in the systems of Union law.

The principle of solidarity has had and continues to play a vital role in the European Union's development project. This is the unifying value between the Member States, whose conflicts and disparities have begun the process of European integration. The preamble to the EU Treaty states that the Contracting Parties were "willing" to deepen solidarity between their peoples, while respecting their history, culture and traditions [4]. The spirit of solidarity at European level is also expressly enshrined in substantive law, as we will emphasize below.

The founding persons of the European Union strongly affirmed the principle of solidarity, placing it at the heart of their conception and defining it as the main tool for European policy. Thus, Robert Schuman declared on May 9, 1950: "Europe will not be made all at once or according to a single plan. It will be built through concrete achievements that first create a *de facto* solidarity" [5]. The idea of *de facto* solidarity translates primarily into effective cooperation between Member States.

Although solidarity was presented from the outset as the basis of EU policies through the integration process and the achievement of community objectives, in terms of regulations, it was gradually structured. The concept of solidarity is only recently strengthened in the sources of primary law with the adoption of the Lisbon Treaty.

Therefore, in the Treaties, we can identify three main roles of solidarity: that of guiding value, that of the political objective and, finally, that of the basis of legal rights and obligations [6].

Article 2 of the Treaty on European Union enshrines the values on which the Union is founded and mentions solidarity as one of the elements that characterize the model of the common European society. The Preamble to the Charter of Fundamental Rights also states that "... the Union shall be founded on the indivisible and universal values of human dignity, freedom, equality and solidarity [...]"

Section 24 (3) TEU expressly calls on the Member States to actively support the European Union's action in the field of the common foreign and security policy "in a spirit of loyalty and mutual solidarity". Proof of the link between loyalty and solidarity and yet implies the obligation of the Member States to refrain from any action contrary to or detrimental to the interests of the Union.

Solidarity is also an objective of the developing European Union, through Article 3 TEU, in different directions: the Union aims to promote "solidarity between the generations", "solidarity between Member States" and solidarity between peoples.

The Charter of Fundamental Rights dedicates Chapter IV to solidarity and, although it does not provide a definition, it clarifies the role as a basis for this

concept [7]. The principle of solidarity plays a key role in European management law irregular immigration and refugee's protection. This principle is expressly enshrined in Title V of the TFEU on "the area of freedom, security and justice". In this context, two categories of solidarity can be distinguished, one internal and one external. The internal dimension includes the institutional dimension, either vertically (cooperation between them and the European Union) or horizontally (relations between Member States). As for the external dimension of solidarity, it includes all EU and Member State measures that address persons in need of international protection and who are outside the territory of the EU and third countries most affected by the phenomenon of forced migration.

The initial asylum strategy adopted by the institutions to strengthen solidarity between asylum Member States was to establish sharing mechanisms that complement the Dublin regime. These actions have been grouped together in the equitable distribution of physical, financial and political responsibilities.

The latest waves of immigration have put the European Union, its institutions and its member countries in the face of one of the most important challenges of the 21st century. It should be emphasized that it has become increasingly difficult, especially for countries located at points of entry into the EU, to combine compliance with the obligations arising from EU membership and participation in conventions.

It must therefore transpose into concrete terms the principle of division of responsibilities between Member States, established by Article 80 TFEU. The Commission has adopted a European Agenda on Migration, which outlines the work plan to be implemented to address the issue of migration with a "new, more European approach", based on the "principles of solidarity and division of responsibilities". The implementation of Article 80 TFEU includes the relocation mechanism and the hotspot approach.

In accordance with Article 25, Council Directive 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, *"the Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons"*. When the number of those who are eligible for temporary protection following a sudden and massive influx exceeds the reception capacity referred to in paragraph 1, the Council shall, as a matter of urgency, examine the situation and take appropriate action, including recommending additional support for Member States affected. The same article establishes in accordance with the provisions of the same article, paragraph 3 that *"when the number of those who are eligible for temporary protection following a sudden and massive influx exceeds the reception capacity referred to in paragraph 1, the Council*

shall, as a matter of urgency, examine the situation and take appropriate action, including recommending additional support for Member States affected".

The relocation implements the idea of sharing responsibility and aims to strengthen equity in the distribution of asylum seekers within the Union. The hotspot approach also develops responsibility sharing, but by sharing the economic costs borne by Member States, as well as technical and operational support in managing migratory flows.

In recent years, there have been toxic rhetoric about migration. While the fight against illegal migration and the strengthening of controls at the borders of the European Union have become a political priority, providing access to fundamental rights to persons with a right of legal residence is an objective in the Union. Hungary, Czech Republic, Slovak Republic refused to implement Council Regulation (EU) 2015/1523 of 14 September 2015 laying down provisional measures in the field of international protection for the benefit of Italy and Greece. Poland later joined opponents. Also, since 2015, the Hungarian government has implemented a border control policy. At the same time, Hungary decided to close the border with Serbia and Croatia using barbed wire to prevent immigrants from crossing the border illegally.

The Slovak Republic and Hungary have challenged the European decision [8]. The Slovak Republic (second and fifth pleas) and Hungary (first and second pleas) have argued that Article 78 (3) TFEU cannot constitute an appropriate legal basis for the adoption of the contested decision. The Slovak Republic, unlike Hungary, emphasized that Article 78 (3) TFEU did not provide an adequate legal basis for the adoption of the contested decision, since the condition of an 'emergency situation characterized by a sudden influx of third-country nationals' was satisfied [9].

Advocate General Bot also argued that "solidarity between Member States has a specific content and a binding character"[9].

Despite international and regional pressures, these states have not given up on politics and the initial vision.

The Union's policies have been overshadowed by restrictive discourses, and the development of human rights-based migration management approaches is key in the long term. Regarding the attitude at European level, although it stated that following and sharing common values and principles, the new situation in this area, divided the Union in two.

Tensions between EU and Hungary policy have risen following the European Commission's rejection in 2017 of its request to co-construct fences along its borders with the Serbian and Croatian states, based on the principle of solidarity, with Hungary declaring that spent EUR 800 million on this. The European Commission, through its spokesperson, argued that no funds are being provided for the construction of fences or barriers at the European Union's external borders and that the principle of solidarity has a double meaning,

reminding Hungary that it has not complied with relocation schemes in Greece and Italy [10].

An updated European Parliament study [11] conducted in 2018 draws attention to the fact that there are cases of criminalization of European solidarity and highlights the deterioration of public discourse on migrants' issues. In this context, it warns of the harmful effects of this attitude in the long run, undermining social trust, democracy and the rule of law.

At the same time, the subject of artificial intelligence has raised all sorts of questions about migration management. Artificial intelligence is made up of a set of knowledge and techniques, which have their own unity according to a common goal related to programming activity, explaining certain cognitive processes related to human intelligence or solving certain complex problems (by computerized means) in several fields of knowledge.

In the field of migration, artificial intelligence is used for data processing, prediction, and prevention. In some states, artificial intelligence is used as a support for decision-making regarding visa applications. Artificial intelligence also provides support in forecasting migratory flows. However, we believe that artificial intelligence also has risks. We mention, in this sense, the errors of intelligent systems. We also believe that the use of AI-based immigration decisions for judicial review will create a clear conflict between maintaining transparency and protecting the data and algorithms on which a decision has been made. Artificial intelligence must be used responsibly. On the other hand, we believe that artificial intelligence must be used at the same level in the Member States so as not to create gaps.

The European institutions are fully aware of the need to apply the principle of European solidarity, as demonstrated by the constant affirmation, by acts in this field. However, the institutional strategy of the European Union has so far proved insufficient to achieve this goal. In this regard, we believe that the willingness to experiment with new solutions must increase, and at the heart of them must be the principle of solidarity, which must be respected by all Member States, without exception.

It should be noted that immigration management policies for foreigners have evolved in recent years in the European Union. Each policy marked the steps towards the development of a policy reflected in the principles articulated by the European Commission. However, there are shortcomings and the European migration management system is imperfect.

In the coming years, climate change, geopolitical risks and aging should continue to guide migratory flows.

In conclusion, the management of migratory pressures placed the implementation of the principle of solidarity in the field of asylum. Thus, this moment may be an opportunity to test innovative burden-sharing measures and radically change the system for allocating responsibilities between Member States.

Legal regulations do not require states how to formulate immigration regulations. Instead, they make it up to states to formulate migration laws, to guarantee respect for the fundamental rights of all immigrants in accordance with the international and regional law to which the state has acceded, by transposing them into national law. At the same time, it should be emphasized that the laws in force do not limit the possibility for states to restrict the entry into its territory of persons who pose a risk to national order and security. But these regulations call for fair treatment of foreigners so that their fundamental rights are not affected. According to Article 3 of the Lisbon Treaty, "national security remains the sole responsibility of each Member State".

3. Conclusions

Migration is not a recent phenomenon, it is a problem that has developed over the years, so it is necessary to propose solutions according to the constantly transforming international context.

Migration legislation has as its fundamental pillar the protection of the human dimension [12]. Respect for human rights is not only a legal obligation of the state, but also a legitimate aspiration of all individuals. It is also a precondition for a democratic society.

The lack of cooperation at EU level has affected the implementation of policies. There is a growing interdependence between states and their integration into a global system and the emergence of transnational organizations; as well as their impact on migration policies. The current dynamics observed in migratory flows.

The processes of regionalization and globalization form a whole; simultaneously participating in

the dynamics of global social transformations that involve redefining relations between states.

The creation of the regional framework for managing migration in conjunction with the principle of solidarity aims to create orderly mobility.

The panorama of international migration over the last thirty years has constantly evolved. All regions of the world are now concerned about this phenomenon. The last five years have witnessed a dramatic increase in the number of forcibly displaced people worldwide and a key part of the international response has been the multilateral and multi-stakeholder effort to develop an architecture that shares the task and responsibility more equitably and predictably. The profile of migrants also takes many forms, as migration affects all categories of populations.

This phenomenon is a relevant issue for Europe, allowing to indicate how it is necessary to establish solutions that materialize and not only reduce migratory

flows, but comprehensive measures are established for all those involved. Consolidating and implementing coherent policies is the lifeline when looking for mechanisms to deal with a crisis of this level. Finally, it can be said that managing a migration crisis is never easy for a single state, so facing it as a group is a challenge because responsibilities need to be harmonized.

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