

## MEASURES FOR LIMITING CORRUPTION UPON MIGRATION WAVE IN EUROPE

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### Abstract

Fight against migrant smuggling has been put as a priority issues at the European Union policy agenda. The trafficked person who has been targeted as object of criminal exploitation is specifically unique for the human trafficking.

The objective of this paper is to present measures, which could result to limitation of corruption mainly through analysing the existing legislation framework against corruption in Europe.

The analysis is focused on exploring the multiple origins of factors influencing migration processes in Europe, as corruption could be characterized as one of the most significant reasons for refugees to flee their countries.

Corruption has a significant role in managing smuggling operations and in particular when criminal organizations and networks are being involved. Illegal migrants and refugees usually represent significant source of additional income for officials involved in the process of boarding protection and immigration control within the European Union borders.

**Keywords:** Corruption, influence, human smuggling, legislation, migration.

### INTRODUCTION

Factors influencing migration processes have multiple origins. Mostly influential factors are related to economic, social and political circumstances. It is possible, influential factors to occur in migrant's country of origin and in that case such factors are called push factors. Whenever the influential factors occur at the country of destination, then such factors are called pull factors. In cases when the crossing of a border occurs under violation of entering conditions of another country of without obtaining proper authority permission, irregular migration is observed. Such kind of migration is directly related to human trafficking or smuggling. In such activities, smugglers and traffickers obtain significant profits from people who are trying to enter on European territory.

Restriction mechanisms for combating illegal transnational groups activities directed to immigration violations form a top priority issue for the European Union policymakers.

Human smuggling and human trafficking could be categorized as criminal activities, which are traditionally are related to additional crimes. Examples of such related crimes include fraud, bribery, human rights abuse, exploitation, extortion, coercion and human rights violation. Such crimes can result to restrictions of certain additional human rights such as freedom of movement and freedom of labour.

Human trafficking and human smuggling are two phenomenon that differ from each other, although the circumstance which causes them are often similar. Such circumstances could be expressed as lack of economic opportunities, poverty and political uncertainty.

Trafficking and smuggling also have common characteristics due to the fact that victims of smuggling could easily become victims of human trafficking which puts them into risky conditions. Such conditions could result physical abuse, sexual violence and extortion.

The phenomenon of human smuggling could be expressed under various forms, regarding the type of person who crosses another country's border in violation of legal regulations. Illegal immigration is always present at the migrant smuggling, and it is always illegal. The reasons for those various forms of illegal immigration are often related to natural disasters, escape from war scenes or political persecutions. Sometimes the reasons for illegal immigrations could be related to opportunities for better economic circumstances.

Typical both for human smuggling and human trafficking is the fact of movement of people from one location to a certain destination and the distinguishing term is the presence or absence of consent of the person being relocated.

The condition of human smuggling has been characterised as facilitation or transportation or even the attempt of such activities or illegal entry across international borders. It is always performed under violation of international law regulations and usually involves the use of fraudulent documentations. Typically there is consensual relationship between the migrant and the smuggler.

In cases of human trafficking, the trafficked person has been targeted as an object of illegal exploitation which results into profit from such activity. Human trafficking is usually based on fraud or force and it not characterized by consensual behaviour between the victim and the trafficker.

## **FINDINGS**

### **Corruption in relation to migration**

When criminal networks and criminal organisations perform their activities in relation to migrant smuggling, corruption usually plays a significant role.

Corruption is a factor which has negative influence on the prevention, detection, and investigation of migrant smuggling. It also negatively influences the prosecution of activities involving migrant smuggling. In systems where public officials are being corrupted, activities such as border protection and immigration control are being sabotaged, while law enforcement is being violated. Private sector is not being excluded from cases of corruption, where it has been observed to serve as facilitating mechanism for illegal entry into national borders for migrants. Most cases include use of fraudulent identity documents or violation of national permit residence regulations and illegal stay in foreign countries.

Smugglers focus on groups of people such as refugees, who need to be specially protected under international law. Migrants who become victim of smuggling may also become victims of additional crimes during the process of smuggling and in cases when the victim consents to be smuggled that does not includes consent for participating in other types of crimes. These are situations where migrants, involved in smuggling are vulnerable and put into danger for their health and for their lives. The international legal framework in regard to the United Nations Convention against Corruption (UNCAC) prescribes the criminalization of corruption manifestation and also the characteristics of different forms of corruption.

Various forms corruption in which the process could be observed includes trading of influence, bribes, abuse of functions and all these forms, which are characterized as serious crimes, could be related to migrant smuggling.

According to the UNCAC, the bribery activity is defined in articles 16 and 21, as act of conferring a benefit. Such benefit results improper influence for an action or a decision. The term "bribe" could be

characterized as a payment by public official from an unwilling member of the public. This payment is extracted by a public official, before the citizen can receive the service to which the person is entitled. Corruption activity is possible to occur either at high government official level or at low governmental levels. Cases of corruption could be occur even when officials are not personally involved in smuggling activities, but they actually share profits from criminal activities related to migrant smuggling.

Law enforcement activities and those involving border control, are being influenced by corruption which is particularly difficult to control regarding the fact that international legal instruments, such as UNCAC define trade influence, as activity involving promise or offering or giving directly or indirectly to an official or to other person an advantage which is undue. The reason for that is in order to get that person to abuse his influence for an undue advantage for oneself.

Trading of influence might in some cases involve acceptance of undue advantage by a public official. The performance or the failure to perform activity by public servant, within the act is against the law, and when the performance of such act is in discharge of his or her functions, for the reason of obtaining some undue advantages called an abuse of functions or an abuse of position. The obtaining of the undue advantage must be for the public official or for another person pr even for another personal gain.

Imbalance of power exists between the migrants and the people who are facilitating the movement from one place to another because of the fact that corruption is directly related to the vulnerable position of the migrants who are smuggled.

Cases of corruption may occur in the country of origin of the migrant, or in the transit route, or at destination, and such corruption activities are usually systematic, but they can also be individual or even institutional. It is also specific that such corruption can occur at various points of the smuggling venue.

Corruption could even occur in circumstances when smuggled migrants have been apprehended to extort additional money form smuggling migrants themselves or by their relatives.

In situations when public officials are being corrupt or the law enforcement system does not functions properly, corruption cases serve as facilitating mechanisms for most criminal activities related to human smuggling, containing transnational element. Every step along the route, from the country of origin to the final destination, could show complications because of corrupt officials, or weak border protection measures.

Bribery and corruption in general, could occur in various stages along the process of smuggling and usually human smugglers have to pay bribes to national public officials and to international public officials along the rout of transit. Usually at entry point and at exit point, public officials are being payed. Additional payments are being performed for necessary documentation, visas forms, permits for stay in a foreign country.

Usually a form of additional income or a type of renting is performed in transit and in destination countries, under the case of bribe acceptance, where public officials are being underpaid. In that case, border protection officials and immigration control servants are being financially stimulated and form significant additional income based on illegal migration activities and refugee smuggling.

Dealing with smuggling related to corruption is a factor for sufficient border control mechanism, while international legal framework exists and all parties under the Migrant Smuggling Protocol have adopted rules for transport operated by commercial carriers from being used in the communication of smuggling offenses.

Criminal international operations including offences of migrant smuggling, often involve evidences located in two or more countries. This situation provides the opportunity for criminal investigations to be initiated in multiple jurisdiction.

Certain social groups such as border protection officials, consular servants, law enforcement officials, could sometimes be involved in risk situations of corruption more severe than other social groups related to other activities. Sometimes the occupied position or their functions make them vulnerable to acts of corruption and forms of transnationals crime.

Corruption, along with violence and instability, could become significant factor when migrants take decision to move from one country to another.

Civilian uprising against corrupt governments often could escalate into armed conflicts, as a result of which many people are forced to leave their homes and become refugees, which is the case in Syria where a great refugee wave has moved towards Europe. Wherever there is a corruption, it is usually an unpeaceful territory.

In most cases corruption tends to prolongs armed conflicts and acts of violation, where efforts of cross boarding smuggling of weapons are insufficient.

## **DISCUSSION**

### **Legislation framework against corruption in EU**

It is crucial to end conflicts, which make people to leave their homes and the fight against corruption can provide positive results on dealing with migrating refugee smuggling. That is why the fight against corruption has become an issue of top priority on the European Union agenda in relation to refugee crisis.

Application of proper anti-corruption standards, which are in line with approved best international practices, should be ensured by transit countries on the frontline of mass migration. Example of transit countries include Bulgaria, Italy, Greece, Hungary, Macedonia, Serbia, Slovenia, Turkey, where police officials and border control personnel must be especially strict on anti-corruption standards application in relation to migration activities.

Cases with presence of weak legislation and institutional framework for tackling corruption can use the option of relying on international instruments for dealing with the issue. Such instruments for tackling corruption includes the UN Convention on Corruption and the Council of Europe Civil Law Convention on Corruption.

As part of the Council of Europe framework, a special monitoring mechanism has been set in 1999 by 17 countries. This monitoring mechanism is called Group of states against corruption (GRECO) and its aim is to improve the capacity for fighting corruption. This improvement could be achieved via mutual evaluation and peer pressure. It has been set, according to the EU Stockholm programme and the Lisbon treaty that the European Union should become member of GRECO. This provides the opportunity for the EU to be part of the GRECO evaluation and provides establishment of higher standards for fight against corruption on EU level.

As part of the fight against corruption mechanism, the European Union has set an European anti-fraud office in 1999, under the name of OLAF, with priority of assisting European Union member states in fight against corruption, fraud and other related criminal offences. OLAF has competences in investigation of allegations of fraud and other against the law activities involving members and staff of the European Union institutions. This may result to disciplinary and criminal proceedings against allegations of corruption.

An Intergroup on Integrity, transparency and organised crime has been set in 2014 as a tool for dealing with the persisting corruption practices. The group has developed programme for setting lobbying rules which are transparent in order to combat organised crimes with transnational elements. This group set in 2014 is a complement to the CRIM, Committee on organised crime, corruption and money laundering set in 2012 with the task of evaluating the EU legislation on organised crime and corruption, in relation to its implementation by EU member states. This activity has been set in cooperation with the Standing committee on operational cooperation on internal security (COSI) and also the Europol.

European Union tools and mechanisms are complemented by the European anti-crime agencies and according to the Lisbon treaty, the fight against crimes affecting EU interests should be evolved into the European Public Prosecutor via Eurojust.

As part of the European Union policy, the issue of dealing with migrant smuggling, helps tackling irregular migration. This has been introduced mechanism since more than a decade, when the EU adopted a legal framework on smuggling. This framework includes Decision on the strengthening of the penal framework, resulting on prevention of unauthorised entry, transit and residence within the European Union. Positive results could be accomplished when law enforcement authorities take operation measures with a support provided from EU agencies. This will disturb the activity of groups dealing with organised crime activities which facilitate irregular migration.

This irregular migration, according to announced data, flows by sea, mainly along the Central and Eastern Mediterranean routs and it has been noted according to Frontex data form 2015, that this irregular migration has been increased of 310 % in comparison to 2013. Cases where migrants are exposed to life-threatening conditions and situation of violence requires strong response by competent authorities and as example of that approximately 3000 migrants are estimated to have lost their lives while trying to enter the European Union by Mediterranean Sea in 2014.

The priority of the activities related to the fight against smuggling was put forward once again in 2015 by the adoption of the European agenda on migration. Main goal is the prevention of migrants exploitation by criminal networks and the reduction of irregular migration initiatives.

Another document adopted in 2015 was the European agenda on security which highlights as a priority, the need of cooperation against smuggling of migrants into the European Union borders.

The business of smuggling of migrants is a profitable activity and data on profits obtained by smugglers is not available, but isolated cases of such information shows that the amount of profit is significant.

### **Measures for limiting corruption influencing migration wave**

Weakening criminal networks involved in smuggling of migrants requires proactive financial investigation activities, where actions against money laundering are crucial. That is why cooperation between the European Union and Financial intelligence units and other relevant networks could be successful in regard to fight against migrant smuggling.

Law enforcement must turn the focus on the financing of the organised crime groups which are involved in migrants smuggling activities. The subject must be prioritised in relation to targeting money connected to smuggling of migrants as regard to the National asset recovery offices and the CARIN – Camden asset recovery inter-agency network. Also cooperation with financial institutions such as credit transfer service providers, banks and credit card issuers must be set as a priority in relation to tracking assets connected to smuggling of migrants. Significant cooperation of the European Union with third countries should be strengthened in regard to confiscation of proceedings in countries of origin of the migrants and the country of transit as well.

The strengthening of support capacity building is essential for the law enforcement authorities via the use of joint investigation teams and provision of mutual assistance between EU member states in cases of migrant smuggling. A strong contribution to that could be done by Eurojust in regard to mutual legal assistance in criminal matters.

It is essential the development of close cooperation mechanism through the entire route, so migrant smuggling could be targeted and ended through effective investigation activities and prosecutions.

## CONCLUSION

In circumstances when people seek less services of migrant smuggling networks, their activity will be weakened. That is why it is important to introduce safer legal ways into the European Union, so efforts of cracking migrant smuggling to be matched with efforts of returning migrants who have been smuggled into European Union countries. Migrants are less likely to pay high price to smugglers to get them into European Union country if they are aware of the possibility of being returned at their initial country, once they have reached their destination.

The disturbance of the business model of migrant smuggling is to be achieved the goal of transforming migrant smuggling into high-risk and low profit activity. That way perpetrators could be brought to justice. In order for that to be achieved though, there needs to be enhanced the capacity of European Union member state countries, as well as the capability of European Union agencies to provide support. For that to be achieved, strong coordination between law enforcement structures and the judiciary structures within the European Union needs to be achieved, as well as multiagency approach to be introduced.

## BIODATA AND CONTACT ADDRESSES OF AUTHORS



Jordan DELIVERSKY is chief assistant professor at the State University of Library Studies and Information Technologies in Bulgaria. He holds a Master degree of Insurance and Social Security from the University of National and World Economy. In 2012, he completed a Master Degree Program on "Strategic Governance, Leadership, Inwardness" at the University of Library Studies and Information Technologies.

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