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Illegal Migration to Modern Europe Methods, Trendenies, Trends

Nielegalna migracja do współczesnej Europy Metody, tendencje, trendy

Abstract: Illegal migration is a burning issue of the present Europe. Not only do Italians, Spaniards, Greeks complain about it, but also many other countries. Human beings' smuggling routes are constantly evolving, and the conditions of smuggling insult human dignity. It is smuggling gangs which benefit primarily and collect huge profits. The assessment of the scale of illegal migrants coming to Europe is not possible because of the hidden nature of the phenomenon. Moreover, published information includes estimated data. The practice is accompanied by threats such as human trafficking, particularly women and children, sexual exploitation of women and children, human organs trafficking, exploiting for crime purposes such as robbery, assault, drug dealing or terrorism. The priority, therefore, is to restore the real immigration policy, which means the urgent need for Europe to recover the security of its external borders.

Abstrakt: Nielegalna migracja jest palącym problemem dzisiejszej Europy. Uskarżają się na nią głównie Włosi, Hiszpanie, Grecy, ale także wiele innych krajów. Szlaki przemytu ludzi ciągle ewaluują, a warunki ich przerzutu urągają ludzkiej godności. Korzystają na tym przede wszystkim gangi przemytnicze, które inkasują ogromne zyski. Ocena skali nielegalnych migrantów przybywających do Europy nie jest możliwa ze względu na ukryty charakter zjawiska, a publikowane informacje zawierają dane szacunkowe. Procederowi towarzyszą zagrożenia takie jak: handel ludźmi, szczególnie kobietami i dziećmi, eksploatacja seksualna kobiet i dzieci, handel orga-

nami ludzkimi, wykorzystanie do przestępczości o charakterze rabunkowym, rozbójniczym, narkotykowym czy terrorystycznym. Priorytetem zatem staje się przywrócenie rzeczywistej polityki imigracyjnej, co oznacza dla Europy pilną potrzebę odzyskania bezpieczeństwa swoich zewnętrznych granic.

Keywords: organized crime, human trafficking, border, illegal migration, migration route, threat.

Słowa kluczowe: przestępczość zorganizowana, przemyt ludzi, granica, nielegalna migracja, szlak migracyjny, zagrożenie.

Introduction

When a quarter of a century ago tolerant Europeans took notes in their contracts regarding thesis of migration, they had in mind only themselves. It was assumed then that migration from third world countries would be small and could be controlled. In the end, a few thousand refugees on an annual basis seemed to be no problem and even benefit for the economy. Today the situation is radically different. Europe is facing the largest since the end of World War II crisis of migration and EU external border security system is unbalanced and dysfunctional. When the migration pressure increases everything is blocked. One of the basic reasons of the crisis is not only the situation in Africa and the Middle East, but also unconsidered migration policy of the European Union of the last several years. The biggest threat is the illegal migration, which activates in many countries, crime environments.

The author makes an analysis of the phenomenon pointing to its close connections with organized crime. Particular attention is focused on the methods and ways of smuggling migrants to Europe, taking into account the scale and development trends of the practice.

Legal contexts of migration

According to the Universal Declaration of Human Rights of 10 December 1948¹ all human beings are born free and equal in dignity and rights, and everyone has the right to life, liberty and security of person. However, according to Art. 13, everyone has the right to freedom of movement and residence within the borders of the country concerned and the right to leave any country, including his own, and return to it. This confirms the International Covenant on Civil and Political Rights of 16 December 1966², which states that everyone has the right to leave any country, including his own.

Migration usually means a massive walking tour, transfer (resettlement) of the population within a country or between different countries in order to change the place of residence permanently or for a certain period, due to political factors, ethnic, religious, economic or other.

The legal norms protecting migrants are found in Migration for Employment Convention No. 97 of 1949³ and the Convention No. 143 of 1975⁴. According to these international agreements discrimination against migrants because of nationality, race, religion or gender is prohibited. Legal migrants have the right to remuneration, including family allowances, leave, working time, etc. not less favourable than those provided by a party to its own citizens. Each of the Parties to the Convention is obliged to hold secret migration and illegal employment of migrants.

18 December 1990 resolution 45/158 was adopted by the General Assembly of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁵. It entered into force on 1 July 2003. The aim of the Convention is to protect migrant workers, by establishing standards for their protection in different

¹ See: http://www.unesco.pl/fileadmin/user_upload/pdf/Universal_Declaration_of_Human_Rights.pdf (access: 5.12.2016).

² International Covenant on Economic, Social and Cultural Rights open to signature in New York 19 December 1966 Journal of Law 1977 no 38 item 167.

³ *Migration for Employment Convention from 1949*, Convention no 97 International Work Organisation

⁴ *Migrant Workers (Supplementary Provisions) Convention of 1975*, Convention no 143 of International Work Organisation.

⁵ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. pdf, accepted by the United Nations resolution no 45/158 of 18 December 1990.

areas and responsibilities of countries sending and receiving migrants. The Convention defines the rights of all migrant workers (legal and illegal) and members of their families and, separately, other rights granted only to migrant workers and members of their families whose status is regulated. It also contains detailed provisions relating to the application of the Convention in relation to specific groups of migrant workers and their families (frontier and seasonal workers).

15 November 2000 the General Assembly of the United Nations adopted the Protocol against Smuggling of Migrants by Land, Sea and Air⁶. Smuggling of migrants shall mean organising illegal entry of a person into a State Party of which that person is not a citizen or in which it has no permanent place of residence, in order to obtain, directly or indirectly, a financial or other material benefit. Each Party agrees to facilitate and accept the return, without undue delay, of smuggled people, who are its citizens or have the right of permanent residence in its territory at the time of their return. This Party should ensure that the return of migrants takes place in an organized manner and with respect for their safety and dignity. The Protocol does not affect the rights or obligations of states and individuals under international law, including humanitarian law and human rights, particularly the 1951 Convention, and the Protocol of 1967 of Refugees, especially the principle of non-refoulement included in them.

In the sphere of EU legislation attempt to define illegal migration appeared in announcement of 19 July 2006 of the Commission of the European Communities on policy priorities in the fight against illegal immigration of third-country nationals, where the problem is usually associated with third-country nationals who illegally enter the territory of the European Union (including in airport transit zones) by land, sea and air, which is often done by using false or forged documents, or through a network of organized crime, composed of smugglers and traffickers. It also applies to people who enter the EU legally with a valid visa or under a visa-free regime, to then acting illegally prolong their stay or change its purpose without the agreement of the competent authorities. Finally, it refers to people who applied

⁶ *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000.* Journal of Laws 2005, no18, item 162.

for asylum, and remain in the country, even though the final rejecting decision has already been taken⁷.

In the above reasoning the Directive of the European Parliament and of the Council 2008/115 / EC of 16 December 2008 is very helpful. It defines illegal stay as a presence on the territory of a Member State of a third country national who does not meet or no longer meets the conditions for entry to the Member State referred to in Article 5 of the Schengen Borders Code or other conditions for entry, staying or residence in that Member State⁸. However, it has to be assumed that foreigners, who, without the fulfilment of certain legal conditions entered and reside in the territory of the State against their will (have been smuggled) should not be considered as illegal migrants, but rather as victims of human trafficking⁹.

In colloquial terms smuggling migrants is considered as conscious organizing or facilitating the illegal movement of persons across national borders, which is made in order to achieve financial or other benefits. The practice is carried out with the agreement of the person smuggled, which, however, does not exclude the fact that it is often accompanied by violence and inhumane and health or life-threatening conditions.

In the European discourse to determine the examined terms, more and more often appear the replaceable concepts such as irregular migration, irregular migrant, immigrant/worker in an irregular situation, unregistered immigrant, people without documents, immigrant, undocumented or unauthorized immigrants. This discrepancy indicates that terminology in Community law should be organised.

Due to the fact that illegal migration is directly linked to organized crime and cross-border crime it is worth to refer to the so-called Palermo Convention¹⁰. The Convention regulates in a comprehensive way issues of prevention, prosecution and punishment of organized crime. It obliges

⁷ See: Statement of the Commission on policy priorities in the fight against illegal immigration of third-country nationals of 19 July 2006, Brussels, COM (2006) 402.

⁸ Art. 3 paragraph 2 of the Directive of the European Parliament and Council 2008/115 / EC of 16 December 2008 on Community standards and procedures used by the third-country nationals, Journal of Laws EU L 348/98 of 24 December 2008.

⁹ More: P. Lubiewski, *Nielegalna imigracja. Zagrożenia bezpieczeństwa*, Part 1, Szczytno 2016, p. 17.

¹⁰ The United Nations Convention against Transnational Organized Crime, approved by the United Nations General Assembly on 15 November 2000 Journal of Laws of 2005 No. 18, item. 158.

States Parties to the penalization of the following offenses: participation in an organized criminal group (Art. 5), money laundering (Art. 6), corruption of public officials, both in active and passive the form (Art. 8), crimes against the administration of justice (Art. 23). Moreover, it imposes on States Parties the obligation to adopt measures in line with national legal principles, to establish the liability of legal persons for participation in the offenses, which penalization is required by the Convention (Art 10). This may be criminal, civil or administrative liability (art. 10 paragraph 2). In particular the States Parties shall ensure that legal persons responsible pursuant to Article 10 of the Convention are imposed appropriate sanctions penal or penitentiary, including monetary sanctions. Convention is supplemented by three Additional Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air, mentioned above, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

Highly interesting is the fact that it lacks there any definition of international organized crime. Instead, the definition of an organized criminal group and of serious crimes can be found in Art. 2a and b of Convention and, in addition, in Art. 3, paragraph 2 – catalogue of the conditions necessary to fulfil to the offense to have an international character.

Organized criminal group means a structured group of three or more persons, existing for a period of time and acting in cooperation with the aim of committing one or more serious offenses established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit¹¹. In addition to the above definition in the Article it has been added that: a group with a structure means a group that was created not in a random manner to commit the offense and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure. While serious offense shall mean conduct constituting an offense punishable by a maximum imprisonment of at least four years or a more serious penalty.

¹¹ Art. 2 of Palermo Convection.

Modus operandi of criminal groups

Third-country nationals wishing to enter the territory of the European Union are increasingly turning for help to the organization specialized in this. According to the head of Europol¹² Rob Wainwright only 10 percent of migrants coming to Europe is doing it on their own. The others use the forms of services to facilitate getting on the continent. In most cases, this task is ensured by criminal groups.

Smuggling people can take different forms and scale from small projects involving a small number of perpetrators to large international criminal organizations. Often two or three perpetrators may work together, recruiting, transporting, or, in the case of human trafficking, in addition to that using a small number of people. Despite the limited size of these activities, the group can quickly earn large sums of money. However, most often this practice is dominated by international criminal networks, having many members operating over a large geographical area. Europol has information on nearly 40 thousand people suspected of involvement in the smuggling of migrants. The suspects come from more than 100 countries - mainly from Bulgaria, Egypt, Hungary, Iraq, Kosovo, Pakistan, Poland, Romania, Serbia, Syria, Tunisia and Turkey. According to general estimates, the net smugglers involved in illegal transportation of migrants to Europe earned in 2015 from 3 to 6 billion euros.

Members of smuggling organisations distinguish very often narrow ethnic specialization and anonymity which reduce the risk of detection. In the structure of smuggling group usually three teams can be distinguished:

- Organising and protecting smuggling - most often people with different nationalities leading the needs recognition in their communities,
- smuggling through the "green border" - people from bordering countries, with perfect orientation in the topography,
- the population nearby the border - local smugglers specializing in logistics tasks (organization of food, shelter, transport or delivery of documents).

¹² Europol (European Police Office) - EU law enforcement agency, whose mission is to increase the level of safety in Europe by providing assistance to law enforcement authorities in the Member States of the European Union.

Involved in smuggling of large groups of people applying more and more new methods and constantly looking for new places or ports suitable for smuggling people and even weapons and drugs. These are rather smuggling gangs than small criminal groups that are linked to the influential spheres through corruption in business and paying officials. In their functioning they are often involved institutions operating both legally and illegally.

Modus operandi of these groups depends largely on the region where smuggling is carried out, measures against illegal migration applied by the Member States and the needs of migrants paying for such services. Their actions constantly equal with its advancement efforts of Member States to disrupt these activities.

Initially, the smuggling of migrants to Europe was organized mainly via the route leading from Turkey by Aegean Sea towards the Greek islands. In use were only small ships capable to transport a limited number of people. Within 2014 modus operandi evolved due to the fact that the influx of irregular migrants was heading for the Italian coasts. They began to use fishing boats or sailboats able to accommodate their decks to 100 people, and at the end of 2014 even the first freight vessel that smuggled migrants was found. Generally, the number of passengers exceeds even two to three times the amount permitted on all ships. Very often, the cruise ship's navigation system is turned off or corrupted. The detection of such a vessel by coastal authorities is possible only after sending a call for help at a distance of 100 to 250 sea miles from the Italian coasts. However, many smugglers usually use unsuitable boats and ships, and even inflatables to transport migrants by sea¹³.

Extremely complicated situation occurs in engulfed into chaos and violence Libya. About half a million desperate migrants waits there for the transfer across the Mediterranean Sea. It does not matter which way to Europe they would choose, first they must go through the ordeal: kidnapping for ransom (for the release the family has to pay 4-5 thousand dollars), forced slave labour, rape or leaving on the desert without water. When they reach the Libyan coast, they easily find dealers offering to cross the sea, however, half money must be paid in advance. The amount of fees is deter-

¹³ Inflatables are offered by Chinese portals of online sales. A boat of 10 meters length costs 1260 dollars which is less than a thousand euros, and can be delivered within 10 days. Minimum order is five pieces. They are also available cheaper and lighter models. Boats are delivered to Tunisia, where people smugglers take them.

mined by the place of migrant origin: African pay around 1 thousand dollars, Moroccan 1.5 thousand dollars, Syrian even 2.5 thousand dollars. The owners of the boat before heading to Europe either change their names or bribe coastguards. While waiting for transport migrants must give back telephones and get rid of the baggage. When they are on the ship they get GPS, life jackets, a little food and water. They can travel only in a seated position without moving. On the smuggling ships there is a racial segregation: black Africans are placed under the deck (in the case of a disaster they have the smallest chance to survive), the Arabs are on board, "richer" can get more space paying extra 20 percent. The organizers of travel are generally not at risk as they do not embark on their boats. The boat-steerer is often one of the migrants – it is also the reason why some of the trips end in tragedy¹⁴.

Modern gangs of people smugglers operate like a large travel agencies organizing cruises for tourists. Some even offer refugees two sailings per week on ships taking once on board up to 200 people. Demand for these services is growing steadily. The data of United Nations High Commissioner for Refugees (UNHCR) show that in 2015 more than a million migrants came to Europe by sea.

One of the reasons for which smuggling of people have been recently intensified within the European Union is the change in immigration laws in Hungary. In 2015, the Hungarians changed the rules and illegal migrants were given the right to free movement; immediately they began to abuse and leave the country into the European Union.

On the other hand, a kind of innovative way of transporting migrants by land, particularly in the Czech Republic is so called carpooling (paid place in a car, or use of such an offer). This idea started to be used by gangs of people smugglers, who transport foreigners from third countries without a valid passport to other European Union countries. For gangs it is cheap and relatively safe way to smuggle as passenger cars are in fact rarely checked on the internal borders of the Union.

In 2016, the Greek Ministry of the Interior has detected several smugglers flights by single-engine planes from Greece to Italy. The smugglers transport "wealthy" migrants willing to pay for the trip from 5 to 7 thousand euro. Upon arrival in Italy, migrants were transported further to

¹⁴ More: R. Stefanicki, *Wojna z przemytnikami*, http://wyborcza.pl/1,76842,17927054,Wojna_z_przemytnikami_Wojna_z_przemytnikami_W_samej.html, (access: 5.12.2016).

Germany and Scandinavia. Retired pilots and employees of the Italian aviation members participated in these activities.

Still current and constantly perfected by the action of organized criminal groups is forgery of documents: Schengen visas, identity cards, driving licenses, residence cards and passports, which successfully find buyers in various countries of the European Union, Africa, the Middle East and Asia. Quite popular method of obtaining documents is buying up stolen or lost identity cards or other such documents, then sending them to the shareholders to create documents proving false identity. The finished products are sent to customers in different countries. Counterfeiters organizations are based in several countries and use professional equipment in this procedure. Production of documents costs from 100 to up to 3 thousand euro.

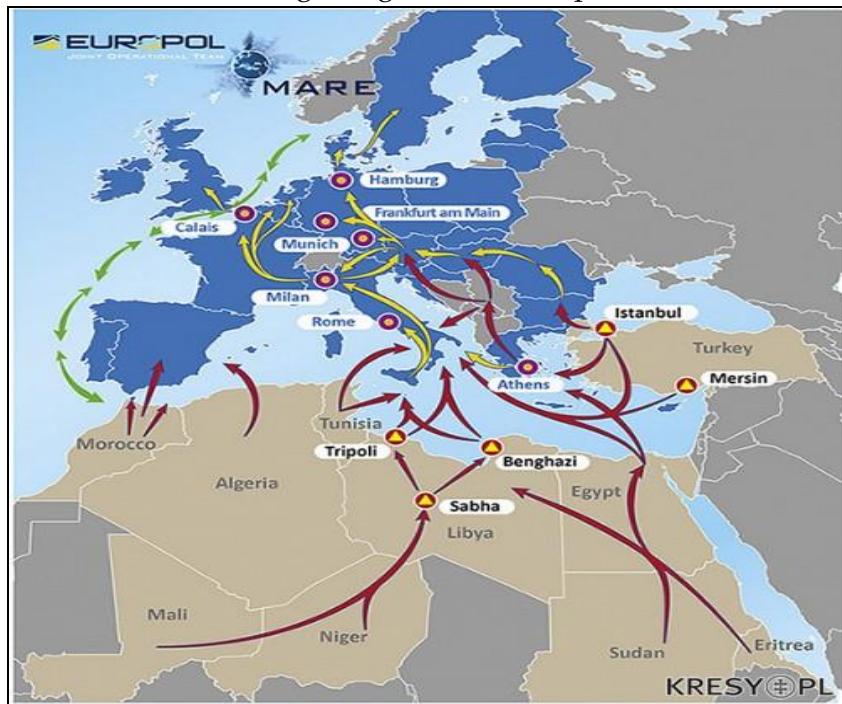
Tendency and migration trends

Characteristic for the current crisis is not only a significant increase in the number of migrants, but also change of the routes, which they use to reach Europe. If, several years ago, the most popular was the one leading from West Africa to the Canary Islands, now the routes from Libya to Italy dominate, and above all through Turkey to Greece and the Western Balkans. Partially it is connected with the geography of armed conflicts, because most of the refugees are citizens of the Middle East, therefore the eastern routes in this case are natural. Another reason is cooperation undertaken several years ago by the European Union and Spain in particular with African countries in order to improve control and the fight against the smugglers. Moreover lasting several years, the economic crisis in Greece has caused the negligence in the protection of borders and seriously increased susceptibility to corruption. Significant importance has also distance, as some Greek islands are just a few kilometres from the coast of Turkey, making travel even by pontoon boats less dangerous than via the Mediterranean Sea or the Atlantic.

Analysis of the practice allows to specify two main routes used by smugglers transporting third-country nationals on the territory of the European Union. The first route is the road leading through the central part of the Mediterranean Sea. This route starts at the northern coasts of Libya and Egypt, and the destination of smuggling are southern Italy and Malta. The second trail is the road leading through the eastern part of the Mediterranean. This route is subject to constant evolution, but now usually the starting

point is the port of Mersin (Turkey), the target is coast of Italy, Greece and Cyprus. In turn, the sea route from Morocco and Algeria to Spain is less popular, but also plays an important role.

Picture 1. Main routes of illegal migration to Europe



Source:https://www.google.pl/search?q=szlaki+uchod%C5%BAC%C3%B3w+mapa&rlz=1C2LDJZ_enPL498PL518&biw=1366&bih=638&tbm=isch&tbo=u&source=univ&sa=X&ved=0ahUKEwiK4PnDuXQAhUH3SwKHeMvBhAQsAQIKw#imgrc=ri8BDQ_fe7TaSM%3A, (access: 3.12.2016).

Firm position of Hungary to the pressure of migration (declaration of construction of the wall along the 175-kilometer of the border with Serbia and its significant seal, closing the border with Croatia, the introduction of much stricter penalties for illegal border crossing and a simplified path to deportation to countries recognized as safe) brought certain results and led to the change in the Balkan route. The evolution of the Balkan route could be seen on the map below.

Picture 2. The Balkan migration route



Source: N. Rujevic, *The Balkan route: A train passes through!*, <http://www.dw.com/en/the-balkan-route-a-train-passes-through/a-18809756>, (access: 8.12.2015).

It is worth to take into consideration events taking place on the Greek island of Kos at the end of 2015 where the migrants were given a map of the new smuggling route to Germany and other Western European countries. The route led from Greece, Bulgaria, Romania, Ukraine and Poland to Germany.

Picture 3. Possible new migration route

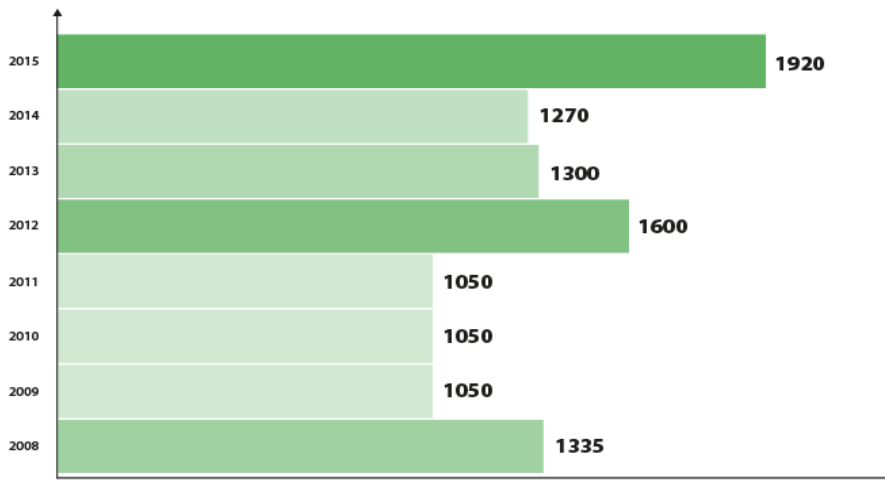


Source: Twitter.com, <https://twitter.com/MalteHenk>, (access: 4.12.2016).

Precise estimates of the scale of illegal migrants entering the European Union is not possible because of the hidden nature of the phenomenon. Annual reports published by Frontex and other agencies or organizations contain information only about the unsuccessful attempts to illegally cross the border of the EU, and it is not known how many attempts have been successful.

The scale of illegally crossed the borders of Europe is shown in the chart below.

Chart 1. Scale of illegal migration to Europe 2008–2015



Source: <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>, (access: 15.06.2016).

In 2016, according to statistics of the International Organization for Migration (IOM), about 270 thousand people came to Europe by sea, over 12 thousand by land, which gives a total of over 280 thousand people. About 3.2 thousand are missing or drowned (data on 21August 2016). For comparison, in 2015 a little more than 1 million people from different parts of the world came by the Mediterranean Sea. According to other data of IOM it is estimated that the countries of first category place of arrival of migrants are: Greece, Italy, Spain, Cyprus. Precise data in the table below.

Table 1. Migrants first arrival to Europe

Country	Arrivals		Changes in %	Main nationalities
	7-13.08.2016	14-21.08.2016		
Italy	1209	2197	+82	Nigeria, Eritrea, Gambia, Ivory Coast, Sudan
Greece	706	941	+33	Syria, Pakistan, Algeria, Afghanistan, Iraq
Bulgaria	687	216	- 69	Afghanistan, Iraq and Syria
Total	2602	3354	+29	

Source: own analysis on the base of M. El Ghamari, *Europejskie trendy migracyjne i statystyki*, <http://el-karama.pl/europejskie-trendy-migracyjne-i-statystyki/>, (access: 3.12.2016).

Summary

Illegal migration is not a spontaneous phenomenon. The most important is an issue of safety on the base of which is the need of control of entry and residence of undesirable foreigners. Pulsating phenomenon of illegal migration is closely associated with organized criminal structures, infiltration and activation of migrants in the activities of terrorist or extremist or transferring social or ethnic conflicts to the territory of the State of residence. There are serious dangers as trafficking in human beings, including the use to work in inhumane conditions of adults and children (e.g. begging), sexual exploitation of women and children, trafficking in human organs, the use of a crime with a robbery, assault, drugs or terrorism. Illegal migrants are functioning in the hidden sphere of permanent illegality, which makes this category of foreigners staying outside the influence of the state in the sphere of social welfare, health, police, or integration programs.

For contemporary Europe it is a decisive moment to mobilize all forces to stop migration, particularly illegal. Those who benefit from the lack of a common European answers are smugglers and traffickers, benefiting from a desperate desire for the safety of other people. Therefore, an effective fight against the criminal world is needed.

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