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Harmonisation of Asylum and Integrations Policy With the European Union Legislation

Abstract

Serbia's strategic priority in the EU integration process is harmonisation of legislative and administrative frameworks with European standards. The importance of migration issue arises from its relevance for the social and economic development and the rate of progress in the European Union accession process. Still, Serbia has no unique and explicitly formulated migration policy. Migration management and integration policy are primarily characterised by being focused on problems and needs of refugees and internally displaced persons. Despite the revised legislation within legal and illegal migrations, asylum and visa policies, adoption of many sector strategies, there is no comprehensive migration policy that is completely harmonised with the European Union guidelines, moralities and principles. Even with the significant progress in these areas, first of all in the asylum system which is harmonised to the international standards to a great extent, Serbia is still facing great challenges due to limited resources, lack of capacities and insufficient coordination of responsible authorities.

Key words: asylum, integration policy, legislation, harmonisation.

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In the past decades, migration policy has taken a very important place in the agendas of all the European countries. Migrations particularly gain in significance in the contexts of globalisation, respectively in the guaranteed freedom of movement and European integrations. Uniquenesses of every country, amplified multiple times at supranational level, pose a challenge to harmonisation of the European migration policy. A need for harmonised migration policy at the level of the Union is directly linked to establishing “a space for freedom, safety and justice in which secured free movement of people is linked to appropriate measures in relation to the control of external borders, asylum, immigration, prevention and fight against crime”.³ Abolishment of internal borders between the states initiated the imperative classification of immigration into the issues of common interest as a non-border area meant that the immigration policy of one country had direct implications on other member countries (Stanković 2011).

The key to success of a harmonised immigration policy lies in the common European framework for integration of migrants. Growing tensions between domicile population and immigrants initiated the first call-up to “more energetic integration policy” in the EU region, sent from the Summit in Tampere in 1999, thereafter a whole number of initiatives which were decorated with efforts for a more efficient integration on one side, and the hostility toward immigrants, on the other.

The status of immigrants within the European Union differs very much depending on economic, demographic, political, social, cultural and other characteristics of a member country – destination country, but also the characteristics of an origin country of migrants. Although heterogenous, a group of immigrants from other member countries is better integrated in the European societies, according to most integration indicators (presence on the labour market, level of education, rates of political participation, housing conditions and so on), while immigrants from the so-called third countries are still very often perceived as a safety treat, especially after the events from 11 September 2001, ever since more restrictive immigration policies have been put into effect.

The acceptance procedure and the length of their stay, countries usually define independantly or through bilateral agreements, depending on demographic, economic and political need for a certain group of immigrants. Perception of migrants as a jeopardizing factor and the politics of fear coming out of it, have had an impact on the contents of conditions imposed by the Union on the candidate countries in view

3 The Treaty of Amsterdam, Article J.7.

of migration issues (Jileva 2002). Increased vigilance of the member countries towards citizens from outside the European Union draws and sets a number of additional conditions that these countries need to meet if they aim at the membership in the Union.

All of these factors have a direct impact on creation and modification of immigration and integration policies of the member countries, but also on their preference, or resistance to common regulations in this field.

Building of Legislative Framework of Migration Policy of Serbia

Dealing with all kinds of migrations – internal and external, legal and illegal, forced and voluntary, there has been the need for a comprehensive migration policy in Serbia for a long time.

The necessity for a systemic management of migrations more recently has come out of the actual demographic situation, which is primarily characterized by a rapid population aging and depopulation in the most vital ages (Nikitović 2009). Also, Serbia has always been the country of emigration, with 2.5 to 4.5 million people of the first, second and third generation in the diaspora. Like other transitional countries, Serbia is dealing with serious economic and social dislocations connected to the persistent poverty, high unemployment rates, growing crises of economic safety, which is why a great number of people are still leaving the country in search of a profitable working engagements.

The basis of migration politics in Serbia, or former SFRY, was made up of ratified documents of the international law within the domain of protected human freedoms: Convention relating to the legal status of stateless persons (1959), Convention relating to the status of refugees (1963), International convention on the elimination of all forms of racial discrimination (1965), International covenant on civil and political rights and other conventions.

With the breakup of the former Yugoslavia, the civil war and NATO military intervention, migration issues have been focused on finding solutions to the status and problems of a large number of refugees and internally displaced persons. At that time, the National strategy for resolving the issues of refugees and internally displaced persons was adopted (2002), which seeks to resolve this problem in a comprehensive manner.

A more intensive activity in the field of migration policy followed in 2005/2006 with the beginning of negotiations on the conclusion of the Stabilisation and Association Agreement, or adoption of the mandate by the Council of EU ministers for negotiations on the visa facilitation and readmission agreements.⁴

Preconditions for the conclusions of these agreements referred to a clear and decisive fight against illegal migration and admission of citizens residing illegally in a country of the Union, as well as other persons who arrived to the EU through Serbia's territory.

In the period preceeding the signing of Stabilisation and Association Agreement (2008), and immediately after the signing, most legal acts were adopted, which is the basis for building a unique and comprehensive migration policy.

The process of European Union accession has actualized the issue of migration management in its most important segments: fight against illegal migrations, visa policies, integration policy, border controls, regulation of residing of foreigners and the protection of citizens in a foreign country.

Guidelines for harmonisation with the European Union legislation in this area have been given in the part of the Stabilisation and Association Agreement on justice, freedom and safety (2008)⁵ and they include mutual coordination and consultation regarding people's movements and suppression of criminal activities.

The begining of a systematic and coordinated migration management towards accomplishing goals and priorities of a migration policy marked the making of the Strategy for migration management in 2009 and the action plan for its implementation two years later.

4 Mandates for negotiations on visa facilitation and readmission agreements with Bosnia and Herzegovina, Macedonia and Montenegro were adopted in the same year as well. Albania had already had a concluded readmission agreement so only the mandate for negotiations on visa facilitation was adopted.

The Agreement concluded between Serbia and the European Union in 2008 on readmission of persons residing illegally on the territory of the Union, procedures for the reintegration of Serbian citizens have been regulated, and their admission has been one of the conditions to put Serbia on the Schengen white list. In order to fulfill the agreement, the government has adopted the Strategy on reintegration of returnees in 2009 as well as the appropriate action plan.

5 The area of justice, freedom and security in its fullest extent defines all relevant elements of a consistent and comprehensive migration policy such as visa regime, border control, prevention and control of illegal immigration, readmission, but also of activities in fighting crimes (human trafficking, corruption, money forging, illegal trade in weapons and narcotics, terrorism).

Apart from this strategy, in the same year were also adopted the Strategy for suppression of illegal migrations in the Republic of Serbia for period 2009 – 2014, the Strategy of reintegration of returnees based on the Agreement on readmission, as well as the Strategy for development of official statistics in the RS from 2009 until 2012, which introduced regular annual investigations of internal migrations from 2009 and external migration beginning from 2012.

It could be said that 2009 was the key year in regulating migration issues because, amongst other things, the rights, obligations and status of foreigners in our country have been defined by the Law on foreigners⁶ and a number of legal acts which regulate in more detail conditions for the approval of temporary stay to foreigners for the purpose of professional development, family reunion, medical insurance, conditions for issuing a visa at the border crossing, extension of a visa expiry date or permanent residence, as well as conditions for refusal of entrance of foreigners into Serbia.

There is no doubt that Serbia made a giant progress in harmonising its legislation to the EU *acquis* in the area of migration. Although success in certain areas of migration differs a lot, a significant improvement in the asylum system which is largely harmonised with the international standards, cannot be denied.

Asylum Policy Development

An important element of migration policies is asylum policy. Due to migration pressures in the 80s and a great number of applications, asylum policy, which had been in a shadow of the European integration by then, started to take the central place in the political discourse of the Union. It was only by the Amsterdam Treaty that the asylum policy was transferred from the third to the first pillar of the EU, and criteria and mechanisms for establishing the country competent for examination of applications of asylum seekers, minimum standards for their admission and temporary protection were defined.⁷

6 Law on foreigners came into force on 4th November 2008, and began to be implemented on 1st April 2009.

7 Treaty of Amsterdam, Article 73k, [online]. Available at: <http://www.eurotreaties.com/amsterdamtreaty.pdf> [Accessed 12 December 2011].

Asylum procedure harmonisation within the Union itself started by the signing of the Dublin Convention⁸ in 1990, which entered into force only in 1997, whereas the foundation for the joint European asylum policy were set in 1999 by the Tampere Programme, respecting the Charter on basic rights in the European Union and the Geneva Conventions. The aim of establishing such a policy is to accomplish similarity in asylum procedures in all the EU member states.

Although the national legislation on asylum policy is based on many international conventions⁹ ratified by our country, in Serbia this area started to be defined ten years after the joint European policy had been established. Beside the international guidelines, this process has been affected by a sudden and constant increase in numbers of asylum seekers.¹⁰ The Law on asylum was adopted in 2007¹¹ and sets the basis for the adoption of a number of regulations¹² for the work of Asylum centre, but also for the rights of asylum seekers.

Asylum application procedure is unique and consists of 4 phases. In the first phase, a person expresses the intention before the authorised

8 The Dublin Convention determines the state responsible for examining applications for asylum, submitted in an EU member state, based on family connections, valid visas or residence permits, crossing the borders of a Union member state during arrival of an asylum seeker from the third country and control of asylum seekers entrance into the territory of member states.

9 Serbia has signed many conventions that make the basis of regulation in this area, such as: UN Convention on the rights of the child, Optional protocol to the Convention on elimination of all forms of discrimination against women, UN Convention against transnational organised crime, The Council of Europe Convention on Action against Trafficking in Human Beings, International Labour Organisation Convention number 14, on migrations in cases of abuse and improvement of equal opportunities and treatment of migrant workers, International Labour Organisation Employment Policy Convention number 122 and number 111 (discrimination in terms of employment and occupations), number 88 (on employment mediation agency), Police Cooperation Convention for Southeast Europe and many other.

10 Until the end of 2010, 461 persons requested asylum compared to 2008 when there was only 77 asylum seekers. Most seekers came from Afghanistan, which was much higher than in other countries of origin (Georgia, Ivory Coast, Iraq, Somalia...).

11 Implemented since 1st April 2008.

12 In accordance with obligations coming out of the Law on asylum, The Commisariat for refugees enacted the following regulations: Regulations on the house rules in the asylum centre, Regulation on the housing conditions and provision of basic living conditions at the asylum centre and the Regulation on records keeping methods and contents regarding persons in the asylum centre ("Official Gazzette of the Republic of Serbia", number 31/2008), and the Regulation determining the right to social welfare for asylum seekers, or those that have been approved asylum (Ministry of labour and social policy) and Regulation on medical examinations of asylum seekers (Ministry of Health).

official of the Ministry of Interior Affairs after which he or she is issued a certificate to be referred to the Asylum Office or Centre. Second phase is registration, during which the establishment of identity, photographing and dactiloscoping is being carried out in the Asylum Department, followed by issuance of identity card to a person, meaning that he or she can formally submit an application for asylum. After the application has been submitted, follows a hearing for the purpose of examining the reasons for seeking asylum. Based on the collected data, an appropriate decision is made (Law on asylum 2007). In case the application is denied, a person can submit an appeal to the second instance court¹³ - Asylum Office, against whose decision an administrative proceeding can be initiated.

According to the UNHCR information, the Law on asylum is largely harmonized with the EU regulations, as well as the duration of the process. While the Directive on asylum procedure (Article 23.2) obliges member states to finalize the procedure in the shortest possible period (FRA, 2010), the European Commission, in its altered proposal¹⁴ suggested that it is limited to 6 months at the first level instance. Although our Law on asylum does not prescribe the maximum duration of the procedure, according to the Law on general administrative procedure, the first instance, or the second instance body must make a decision on application, or complaint, within 60 days, which means that the whole procedure cannot last more than 4 months.

The Law on Asylum provides three forms of protection which are, at the same time, normative solutions in most member countries:

- refuge, or refugee status provided to refugees on the territory of Serbia due to justified fear of persecution from their own country (Article 2);
- subsidiary protection, granted to foreign citizens whose lives, safety and freedom would be endangered should they return to their country of origin (Article 2), and
- temporary protection, provided in the case of a massive influx of persons from a country where their lives are threatened by a generalised violence, conflicts or violation of human rights (Article 36).

Harmonisation with the European Union legislation is also reflected in implementation of safe origin country and safe third country concepts (Article 2, para 11 and 12). In accordance to that, in 2009

13 First instance authority is the Department for asylum that makes decisions.

14 See: European Commission COM(2009) 554 final, amendments to Article 23.3.

the Decision on establishment of a list of safe countries of origin and safe third countries was adopted. Also, the Law defines the reasons for groundlessness of asylum requests, but not the examination procedure, although the Council of Europe adopted the regulation for expeditious examination of groundless asylum requests. In addition to these concepts, the Law on asylum stipulates principles of asylum proceedings the aim of which is warranty, or protection of rights of an asylum seeker, first of all in providing free legal aid and information, translation services, free access to UNHCR, advocating unaccompanied minors and handicapped, as well as an obligation of hearing an asylum seeker in the shortest possible period (Janjević 2003: 191).

Even though the Serbian asylum system is mostly harmonised with the European legislation, the key challenge is the lack of experience, or institutional and human resources.

In the field of institutional framework, apart from responsible ministries dealing with these issues (Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Labour and Social Policy, Ministry of Human and Minority Rights and Ministry of Religion and Diaspora), the new authorities have been established for a more efficient approach to the problem. Significant roles in national politics have the Council for fight against human trafficking, established in 2004, Council for integration of returnees based on the Agreement on readmission, formed in 2008, and the Coordination body for migration monitoring and management, founded a year later, within which the Commissariat for refugees carries out professional, operational and administrative and technical jobs. However, during the process of reform implementation and harmonisation with the Union laws, Serbia did not identify services that would serve for implementation of provisions related to determining responsible states for examination of asylum requests and for record keeping and finger print processing of asylum seekers, considering that it is not a signatory to the Dublin II regulation nor a user of Eurodoc system that was introduced for easier implementation of the Dublin Convention (Janjević 2003).

Insufficient accommodation capacities for asylum seekers are a particular problem having in mind current, but also perceived, greater influxes due to political upheavals in the North Africa. Besides, there has not been an adequate answer to the problem of false asylum seekers to whom Serbia is just a transit country towards the countries of the European Union, so many of them “disappear” before their applications even get examined.

Basis of Integration Policy in Serbia

Diversity behind integration trends of migrants overcomes national borders of a state and becomes a general issue of many European institutions at all levels. From the very beginning, integration made the essence of the European policies. As one of the main goals of the European integration was internal market, integration itself was understood as a process of facilitating mobility of the European Union workers over the member states borders, in which they enjoy equality, indiscrimination, the right to family reunion and the right to a safe status. The EU has considerably modified its understanding of integration through the development of a common framework for integration related to the third countries citizens as part of the area of freedom, safety and justice.

Integration of so-called third-country nationals in the European Union became a matter of multilateral normative and developmental political processes of the policies starting from 1999. However, the principle of subsidiarity is still leading in this area, which led to the occurrence of alternative policy frameworks that are based on the knowledge and information sharing (Carrera 2008). Integration policies are currently in a phase of designing, major modifications and development.

Although the previous decade is characterised by relatively slow development of integration framework, its progressiveness cannot be denied. Common integration framework is an innovative network management in the area of integrations related to third-country nationals at the Union level and comprises a package of non-compulsory regulatory instruments and various supranational networks.

As employment is the key principle¹⁵ of integration process (one of total 11 adopted basic integration principles in 2004) which is “a dynamic, two-way process of common harmonisation” of both immigrants and nationals of a member state (Council of the European

15 The main integration principles were adopted on 19th November 2004 at the meeting of the Council of justice and internal affairs with the aim to help formulating integration policy, as simple, non-binding guides through which a member state can evaluate its policy. These principles relate to key elements and mechanisms of a successful integration of immigrants in the EU member states, such as: respect for the main EU values, basic knowledge of a language, history and institutions of the host society, education, access of immigrants to institutions and services, frequent interaction between immigrants and EU nationals, participation of immigrants in the democratic process and formulation of integration policy and measures, appreciation of different cultures and religions and so on.

Union, 2004: 17), it could be said that Serbia has mostly approached the Union measures exactly in terms of economic integration measures.

Namely, the main principle of foreign nationals integration in Serbia is achievement of the rights arising from labour, and above all: the right to work and employment, professional development and education, access to labour and services market, the right to social and medical insurance, the right to social welfare, freedom of association, connection and membership in organisations that advocate the interests of workers and employers. An unemployed foreign national with permanent residence is entitled to active employment policy measures like our nationals, if registered with the National employment service.

Since education is an important factor of efficient economic integration, following the efforts of the EU member states in providing the same rights for immigrants and domicile population, Serbia has foreseen favourable legal regulations guaranteeing that the rights to education be exercised under the same conditions as for the nationals of the Republic of Serbia. However, what makes Serbia quite different from the European Union member countries is absence of compulsory language learning, or language courses,¹⁶ but possibility of mother tongue and culture education for the European nationals' children in an institution determined by a local authorities based on the principle of reciprocity is provided.

The rights from the social insurance system are exercised on the basis of bilateral agreements¹⁷ on social insurance coordinating the social insurance system. These agreements significantly respect European principles, allowing summation of insurance periods for exercising the rights from social insurance, payment of pensions in the territory of the other contracting state, equal treatment of the other contracting state nationals, proportionate part of benefits (*pro rata temporis* principle) etc.

In the pension and invalidity insurance system, foreign nationals employed in our country are entirely equalized with the nationals of Serbia in rights and obligations.

16 Except for the displaced persons and refugees for whom the school arranges language courses, or additional classes according to a special programme for activities relevant for further education.

17 Serbia has concluded agreements on social insurance with 27 countries of which 16 are the European union countries. Most agreements were concluded during the time of Yugoslavia.

Family care and social welfare are regulated by the Law on social welfare (2011), Family with children income support law (2009) and Family law (2005).

Assistance and support to foreign nationals within family protection and children care is provided only under the conditions set out in bilateral agreements on social insurance. According to the Family with children income support law “a foreign national working in the territory of the Republic of Serbia is entitled to the children support, providing it is determined by the international agreement, under the conditions prescribed by this Law” (Article 17 para 4).

Apart from the Republic of Serbia nationals, the Law on social welfare also specifies, as beneficiaries of the social welfare, “foreign nationals and persons without citizenship, in accordance with the law and international agreements” (Article 6 para 1 and 2.). Most services of the social welfare, which at the same time also represents social inclusion measures, are carried out at local level, so local authorities provide these services for all the residents of a certain local community.

Integration framework for asylum seekers, as one of the groups of foreign nationals, has been contained in the Law on asylum and the mentioned adopted regulations. Namely, asylum seekers in Serbia have the right to health care and social welfare. Should they be granted a refuge, these persons shall have rights equal to those of permanently residing foreign nationals with respect to the right to work, freedom of movement, movable and immovable property and the right of association. Furthermore, a person seeking asylum has the right to free primary and secondary education and accommodation for up to one year upon being granted asylum, which is also in line with the principles of the EU regulations.

However, even with these efforts to harmonise integration policy as much as possible with the principles of the European policies in this area, the specificity of Serbia is the focus on integration of refugees and displaced persons, which is regulated by the Law on refugees and the National strategy for resolving the problems of refugees and internally displaced persons. Internally displaced persons are legally and formally nationals of Serbia, meaning that they have the same rights and obligations like all other nationals. In reality, due to poverty, complicated administrative procedures, unresolved property relations, many of them have troubles to exercise their own rights. Regulated residence is of a vital importance for their realisation, so the lack of personal documents, be it because they never had one (Roma) or because they were

destroyed or burned in Kosovo and Metohija, excludes them from realisation of various guaranteed rights (Brkić 2007).

Refugees are holders of the rights to health care, education and work under the same conditions as domestic nationals, as well as the right to local services and accommodation in the social care institutions. What is lacking at this level are integration support services which are not sufficiently developed. Even with the guaranteed rights, the problem is that most of them they exercise with their refugee identification without the personal identity number, which is the condition for resolving many statutory and administrative issues (Brkić 2007).

Most of the integration measures for this category of foreign nationals are primarily directed to their social, however much less to their economic integration. In the first years after the war, they implied permanent solution of housing issues, while in the last years they are directed towards a new form of social protection – social housing in protected conditions. For better economic integration, different programs and trainings have been developed in order to increase competitiveness on the labour market and achieve financial independence.

In general, adoption of the new Law on citizenship (2007) contributed to the social, economic and political integration of all foreign nationals, which simplified the requirements for acquisition of citizenship and created the possibility to achieve more rights.

Conclusion

At the EU level, immigration and integration issues are on the top of agendas of the member states and are inextricably linked to the ideals of freedom, safety and justice. Although all member countries are coping with the growing aging of population, but also with the new immigration pressures despite the contrary expectations at the beginning of the world economic crises, it cannot be said that there exists a political or social consensus on the best migration policy and cultural and ethnic diversity (Angenendt 2008).

However, there are still differences present in the number of asylum seekers, rates of approved asylum applications, and the guaranteed status of immigrants in a member country and at the EU level. There is still a long way of harmonisation process ahead of some member states in order that asylum seekers have the same treatment (Richt 2006).

In light of the accession process, there is a number of preconditions placed in front of Serbia, as a state aiming for membership in the European Union, relating to reforms of legislative system and its harmonisation with the European legislation. Migration control is only one of the principles, priorities and conditions defined by the National plan for integration of the Republic of Serbia into the EU.

Serbia has achieved the greatest progress in the asylum system, as far as harmonisation of legislation in this area is concerned. Also, a progress has been noted in the areas of visa regime and process of re-admission, despite certain issues such as: a lack of precise evidence, as far as returnees from the European Union countries are concerned, and insufficient coordination at all levels in order to secure admission and reintegration. Besides, many returnees do not have personal documents, which is why they are unable to exercise their rights, and some of them (even 30% according to some information) are trying to go back to some European countries upon return in spite of stimulation by Union countries given for a voluntary return as a kind of financial support.¹⁸ This indicates that Serbia has not gone far from the incentive measures in the integration policy that would primarily be directed to the social integration of refugees from the former SFRY republics after the war developments in the nineties.

The farthest “distance” from the European regulative system of these policies (asylum system and integration policy) is the lack of initiative at the local level because inclusion institutions and services, whose availability and responsibility lie with the local authorities, are an important factor of successful and complete integration. As a frequent interaction between migrants and member countries nationals are one of main mechanisms of integration in the countries of the European Union, many practices at the local level aim to make these interactions less conflict, fostering a sense of belonging and changing perspective. Projects aiming to decrease tensions and stimulate communication are implemented in many European cities.

The speed of the accession process of Serbia to the European Union will directly depend on overcoming these disadvantages. The membership will not be possible without a firm commitment and intensive work of Serbia on adoption of principles and values that the European society is based on.

18 Ibid.

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