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Integration vs. Discrimination: Protection of Human Rights in EU Migration Policy and the Role of the ENP in Shaping Migration Policy Framework in the RA

Master's Degree Programme in Human Rights
and Democratisation in the Caucasus



EIUC

European Inter-University
Centre for Human Rights
and Democratisation

YEREVAN STATE UNIVERSITY



Center for European Studies

*Master of Arts
Thesis*

Integration vs. Discrimination:

***Protection of Human Rights in EU Migration Policy and the Role of
ENP in Shaping Migration Policy Framework in the RA***

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Submitted on 20/06/2015
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Thesis defended on 8/07/2015

Grade

Chair of state examination Board

Yerevan 2015

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Abstract

This paper examines three separate - but very interconnected topics on the protection of migrants' rights in the EU and Armenia. Migration policy development in the EU is discussed together with the need for ratification of ICRMW by EU Member States, which may be a strong tool for better protection of human rights. Also analyzed in the paper is how integration policy is significant for migration policy development, more precisely, how economic and cultural exclusion becomes a threat for integration. The analysis of endogenous relationship of integration and discrimination is based on various sociological and statistical data; surveys carried out in several EU countries and final observations, reports from the Committee on the Elimination of Racial Discrimination. The final chapter is devoted to immigration flows in Armenia, the impact of the Syrian crisis on the country's migration management and the role of the European Neighbourhood Policy on migration policy development in the Republic of Armenia.

Introduction

Frequent political changes, violent conflicts, terrorist attacks, instability in different parts of the world and rising income disparities between the states and regions have contributed to an endless rise in movement of people. High levels of poverty and unemployment in the least developed countries, as well as in industrialized ones, have resulted in feelings of despair or survival and hopelessness for youth who cannot see any bright future. In pursuit of happiness a vast number of people leave their countries, which causes mass migration. Since the beginning of the twentieth century, migration movements have increased.

The population in the world grew from 2 to 4 billion between the 1920s and the 1970s, whereas in 1990 there were over 5 billion people. 6.5% of the world's population in 1992 was in twelve EU countries, of which 17 million (approximately 11% of the labour force) were unemployed by that time.¹ The economies of the former Soviet countries faced difficulties, after the Cold War they had not realized the shift from "command economy" to what free-market economy is, as well the essence of democracy and development. These challenges caused

¹ www.un.org/esa/population/.../PopulationDistributionUrbanization.pdf

destabilization and unrest which again resulted in migration. Consequently, Western European countries have registered significant increases in immigration from developing countries, countries in transition and areas of conflict.

For the EU, with its big amount of migrants, it was important to develop a profound migration policy providing opportunities for better integration. It has been considered for a long time as an area of peace and prosperity, which is the reason it attracts a lot of migrants. After North America EU states are the next destination for international migrants. Hence, it is important to investigate overall protection of migrants in Europe, trying to find answers on the following questions: what the reasons are why none of the EU Member States has not yet ratified the foremost core international convention on the protection of all migrants; how well does EU Integration Policy function and what changes have been made in the migration policy management of the RA?

The paper is composed of three chapters. The first chapter presents the EU Migration Policy, how it was developed, remaining challenges and the importance of ratifying the International Convention on Protection of Rights of All Migrant Workers and Members of Their Families (hereinafter ICRMW). The clarifications of the provisions from the convention will thoroughly be analyzed as well as the obstacles and reasons for non-ratification. The second chapter discusses EU Integration Policy, more precisely, what barriers to integration migrants face in Europe, and how discrimination is connected with integration. The third chapter investigates the impact of the Syrian crisis on Armenia and the role of the European Neighbourhood Policy in regulation of migration in Armenia, mainly concentrating on its impact on the border management, visa facilities and combating discrimination. The results based on various researches, reports from international committees and self-conducted interviews are presented in the conclusion.

CHAPTER I

EU Migration Policy and ICRMW

According to 2004 statistics, the highest percentage of migrants from the Middle East and North African countries was in France, while from Eastern and South-eastern European countries it was in Germany.² After World War I, many Italians and Poles fled, and then they were followed by the Spaniards and Africans after Spanish War during decolonization movements. In the 1990s, people from the former Yugoslavia and Romania joined this movement. Finally, this huge number of migrants turned into a migration crisis because of illegal immigrants and refugees seeking political asylum, but who in reality were just illegal economic workers. Since 1994 French authorities started to make restrictions towards illegal immigrants, the entry of refugees, as well as making it more difficult for legal immigrants to get French citizenship, particularly for those from Islamic countries. A scholar Juergen Habermas states that “we really have to take the phenomenon of a multicultural society seriously.”³ In Europe the composition of the population is changing and this is taking place in a difficult economic climate with high unemployment and an impression conveyed by the media that ethnocentrism and a nation are once again a matter of central importance.

The source areas of the flows have diversified, as pointed out by Rinus Penninx regarding Europe: “Migration movements were still largely characterized 30 years ago in one of three ways:

1) a colonial or post-colonial heritage: e.g. Algerian migration to France; Puerto Rican movement to the US; Indian and Pakistani settlement in the United Kingdom; West African migration to France and the UK; Surinamese migration to the Netherlands.

2) labour migration: e.g. Turkish *Gastarbeiter* to Germany; Mexican *Braceros* to the US.

² Demographics from ec.europa.eu/.../regions2020_demographic.pdf

³ From the interview of Krzeminski and Michnik, *More Humility, Fewer Illusions*, P.25.

3) Cold war refugee migrations from the Soviet Union, Central and Eastern Europe and Third World ‘hotspots’ like Cuba or Vietnam”.⁴

The question of social cohesion in many places is further raised by transnational practices and their incidence on settlement and integration processes. The control of immigration flows has become one of the greatest concerns of the EU in its relations with African, Mediterranean and its neighbouring countries, along with trade agreements and security concerns.⁵

It is worth mentioning that the European countries’ self-definition as non-immigration countries had a significant impact on the policies of integration. The North-West European countries hoped to ‘solve’ the contradiction of not being an immigration country and yet importing significant labour in the 1950s and 1960s by defining these migrants as ‘temporary guests’. Such a definition was linked to limited facilities for accommodation in anticipation of their eventual return while a significant proportion stayed for good and formed communities that gradually grew. Some national governments identified these tensions relatively early and initiated some policy of inclusion or integration, like Sweden in the mid-1970s and the Netherlands in the early 1980s. Most countries acknowledged the need to formulate ‘integration policies’ much later in the 1990s, often hesitantly or partially. For most of the twelve new members of the EU the experience of migration and integration is relatively new and has taken multiple forms: emigration, immigration and transit migration co-exists in most of these countries. At the same time, the European Union has become an important forum for policy development through its initiatives to create a framework for common migration policies (since 1997) and integration policies (since 2003).⁶

1.1 Background and Policy Development

In October 1999 the European Council held a meeting in Tampere, Finland and declared that “the separate but closely related issues of asylum and migration call for development of a

⁴ Penninx, Rinus, M. Berger & Karen Kraal (eds.) (2006), *The dynamics of international migration and settlement in Europe: A state of the art*. Amsterdam: IMISCOE-AUP Joint Studies Series.

⁵ Cédric Audebert, Mohamed Kamel Doraï, *Migration in a Globalised World*, 2010.

⁶ Penninx, Rinus (2005), ‘Integration of migrants: Economic, social, cultural and political dimensions’, in M. Macura, A.L. MacDonald & W. Haug (eds.), *The new demographic regime. Population challenges and policy responses*. 137-152. New York/Geneva: United Nations.

common policy”.⁷ In November 2000 shortly after this meeting two Communications (known as *the Community Pillar*) were published in November 2000 which offered proposals in the sphere of migration and asylum policy. The Tampere meeting contributed to the creation of an area of freedom, justice and security that was placed at the top of the EU’s political agenda and would realize the initiatives of the Amsterdam Treaty. According to Article 63 of the Amsterdam Treaty, the Council should adopt measures on asylum, temporary protection of refugees and illegal migration within five years of Treaty ratification (by May 2004). The Tampere conclusions stated the necessity of ensuring fair treatment of third country nationals (TCN),⁸ but this issue was discussed only in the context of lawfully present TCNs. Moreover, the Vienna Action Plan⁹ also demonstrated preoccupation with prevention and reduction of irregular migration that should have been achieved through *inter alia*, coherent EU policy on readmission and return¹⁰, further harmonization of Member States’ laws on carriers’ liability¹¹ and closer cooperation between Member States’ border control services.¹²

In the terminology applied by the EU one may not see the term “human rights”, it is substituted with “fundamental rights” and there is no difference between them. In comparison with other international human rights treaties (such as the ICCPR and the ICESCR), the Charter of Fundamental Rights (CFR) does not distinguish between civil and political rights and social and economic rights, but includes all rights in one document. The Lisbon Treaty which entered into force in December 2009, has conferred legally binding status on the Charter of Fundamental Rights, obliging the institutions of the EU to respect the rights it enumerates. According to Article 51(1) of the CFR:

⁷Tampere European Council, 15 - 16 October 1999, www.europarl.europa.eu/summits/tam_en.htm

⁸ **Third Country National (TCN)** is a term often used in the context of migration, referring to individuals who are in transit and/or applying for visas in countries that are not their country of origin (i.e. country of transit) in order to go to destination countries that is likewise not their country of origin.

⁹ **The Vienna Declaration and Programme of Action**, also known as **VDPA**, is a human rights declaration adopted by consensus at the World Conference on Human Rights on 25 June 1993 in Vienna, Austria.

¹⁰ Vienna Action Plan, *supra* note 36, para. 36 (c)(ii).

¹¹ Vienna Action Plan, *supra* note 36, para. 36 (d)(iv).

¹² Tampere Conclusions, *supra* note 37, para. 24.

“The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.”¹³

Being responsible for initiating legislation, the European Commission has claimed that legislative proposals will pass through a human rights impact assessment to ensure compliance with the CFR. However, as long as national law cannot be considered to be giving effect to EU Law, the CFR has no role in determining its validity.¹⁴

While being neither nation-state constitution nor international human rights treaty, the Charter described as a Bill of Rights for EU citizens has changed the relationship between the individual and the State providing a wide number of rights and entitlements. However, the fundamental rights codified in the Charter are not the exclusive preserve of citizens, as there are, for instance, some limitations concerning the rights of migrants in an irregular situation, and there is only one of the seven Chapters – Chapter V on Citizens’ Rights - that contains provisions with citizenship limitations.¹⁵

The EU also developed a common integration policy, in particular using the European Commission communication on “A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union” in September 2005. Moreover, on 28 February 2002, the Council initiated an Action Plan to combat illegal immigration and trafficking of human beings in the EU. With the goal of establishing “a space of freedom, safety and justice” the EU Council adopted the Hague Programme (2005-2010) in November 2004.

¹³ E. Guild, *The European Union after the Treaty of Lisbon: Fundamental Rights and EU Citizenship*, Brussels: CEPS 2010, p. 1.

¹⁴ European Commission, ‘Report on the Practical Operation of the Methodology for a Systematic and Rigorous Monitoring of Compliance with the Charter of Fundamental Rights’. COM(2009) 205, 29.4.2009; Commission Communication, ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’, COM(2010) 573 final, 19/10/2010.

¹⁵ S. Peers (2012), ‘Immigration, Asylum and the European Union Charter of Fundamental Rights’, in: E. Guild and P. Minderhoud (eds), *The First Decade of EU Migration and Asylum Law*, Leiden: Martinus Nijhoff, pp. 437-468, at p. 468.

Under this programme particularly, the EU started a process on legal migration, launching a Green Paper on an “EU approach to managing economic migration” in 2005.¹⁶ Thanks to the Green Paper, four Directives were adopted on the entry and residence conditions for salaried workers (highly-skilled workers, seasonal workers, intra-corporate transferees [ICTs] and remunerated trainees). In parallel, the Hague Programme saw a shift towards more practical forms of European cooperation on asylum and migration.¹⁷

The Hague Programme also saw the emergence of the Migration and Development nexus, in particular with the Commission’s communication on “Migration and Development: some concrete orientations”. The process on the integration of third-country nationals was also furthered. The Stockholm Programme (2010-2014) was adopted by the European Council in December 2009. Even though it is in line with the two preceding Programmes, it introduces a number of relevant innovations with regard to migration policies at the EU level. The first is the transfer of asylum and migration community competence under the First Pillar, thus moving from a unanimity requirement to one involving qualified majority voting in Council combined with co-decision by the European Parliament in terms of adoption of legislation. In theory, diverging national policies are now less likely to slow down or prevent agreement on measures at the European level. However, it remains to be seen whether there will be the political will to use the qualified majority principle in cases where major EU countries will be opposed to the Commission’s proposals.¹⁸

The call for ratification of the ICRMW was made on different occasions by EU Parliament and it has shown the Parliament has gained more relevance and power. Indeed, the support that the Parliament has shown consistently to the ICRMW, coupled with the support of a number of Members of the European Parliament (MEP) for the ICRMW, is a crucial element of the discussion on ratification of the ICRMW in the EU.¹⁹

¹⁶ www.eur-lex.europa.eu › EUROPA › EU law and publications

¹⁷ Elizabeth Collett, Beyond Stockholm: overcoming the inconsistencies of immigration policy, European Policy Centre, EPC Working Paper N° 32, 2009, pp. 12-16.

¹⁸ Ibid, p. 78.

¹⁹ René Plaetevoet and Marika Sidoti, Ratification of the UN Migrant Workers Convention in the European Union- Survey on the positions of governments and civil society actors, December 18, December 2010.

The Stockholm Programme also promises for a more inclusive and non-discretionary approach to migration issues. This Programme, which substitutes the Hague and Tampere Programmes, was adopted in 2009 in Brussel. It has set the following priorities: promoting citizen rights, improving their everyday lives, protecting citizen, ensuring access to Europe in a globalised world, solidarity and partnership in migration and asylum matters. The need to find practical solutions to increase cohesion between migration policies and other policy areas such as policies for trade, employment, health and education at the European level is recognized as an important objective. The Stockholm Programme reaffirms the principles set out in the Global Approach to Migration, as well as in the European Pact on Immigration and Asylum, and highlights the need for EU migration policy to be an integral part of EU external policy.²⁰ The Global Approach to Migration (GAMM)²¹ was subsequently improved through various Commission communications.²² It relies more on the External Relations of the EU, hence on cooperation with third countries. It is mainly focused on managing legal migration, preventing and reducing illegal migration, and the relation between migration and development. Together with previous programmes this last shift was definitely a more restrictive approach to migration. Even more initiatives have been developed from the political side, demonstrating that States do not always converge in their approaches to migration policy which is an important issue for them. One of such striking examples is the European Pact on Asylum and Immigration, which was adopted in October 2008 under the French Presidency.²³ The Pact influences the EU migration policy to a great extent: the Directive on long-term resident status establishing an ambitious set of rights of long-term resident TCNs grants them equal treatment with EU citizens in many fields. It is important to note that EU legislative acts and proposals regarding migrants in a largely instrumental manner, pay little attention to a rights-based perspective. Besides, the General Framework Directive Proposal involves such rights dealing with certain legally staying TCNs as well as assimilating them strongly to those provided for long-term residents. Thus, we

²⁰ <http://www.mfa.gr/en/foreign-policy/greece-in-the-eu/area-of-justice-freedom-and-security.html?page=2>

²¹ The Global Approach to Migration and Mobility (GAMM) is, since 2005, the overarching framework of the EU external migration and asylum policy.

²² Including: A Common Immigration Policy for Europe: principles, actions and tools, COM/2008/0359.

²³ <http://www.euractiv.com/social/europe/european-pact-immigration-asylum/article-175489>

may conclude that the proposal ensures at least fully regular migrant workers many of the rights which are included in the ICRMW.²⁴

The Explanatory Memorandum of the Proposal displays a difference of attitudes and rights between TNCs and citizens. The main goals fall within the ambitions of the EU, which means that rights are recognized for the necessity of the European economy development and for social cohesion, and not because immigrants are entitled to them under human rights law. Unfortunately, after long negotiations the Proposal in 2007 was not accepted by the European Parliament in December 2010.

So, the European Pact on Asylum and Immigration together with the GAMM reflected the migration and refugee policy in Europe, making the main priority the respect of human rights. These instruments have fostered well-managed mobility, better organized legal migration and promoted international protection. Having already discussed the background of EU Migration Policy and the role of the Tampere Programme, the Hague Programme and the Stockholm Programme in the development of EU migration and external policies, we will move on to one of the most prominent conventions protecting the rights of all migrants and barriers to its ratification by the EU States.

1.2 ICRMW: Challenges for Ratification

The International Covenant on the Protection of Rights of All Migrant Workers and Members of Their Families (ICRMW) is one of the nine core international human rights treaties. It was adopted by the United Nations General Assembly unanimously on 18 December 1990 and entered into force on 1 July 2003 after ratification by 20 States. Initially, it was believed that it would be widely ratified, including by European States. However, not only did European States not ratify it, but other more supportive States did not do so until the late 1990s. Like all core international human rights treaties, the ICRMW builds upon the fundamental rights recognized in the Universal Declaration of Human Rights (UDHR) and develops a set of principles that are of particular importance to the situation of migrant workers and their families. Importantly, the

²⁴ Euan MacDonald and Ryszard Cholewinski, "The ICRMW and the European Union", in *Migration and Human Rights - The United Nations Convention on Migrant Workers' Rights*, op. cit., pp. 387-390.

ICRMW includes fundamental rights for all migrant workers and their families, independently of their status (regular or irregular) in their country of transit and employment.²⁵

It is the first time that all migrant workers' rights are put together in one convention, in a comprehensive set of articles. The aim is to address particular vulnerabilities of migrant workers and members of their families. In addition, its application is supervised by the Committee on Migrant Workers (CMW) that has developed working methods and expert understanding of the provisions of the ICRMW over the last six years.²⁶

The ICRMW has the same universal dimension as do the other core international human rights treaties, and although it does not create new rights, the convention involves many rights from other internationally recognized conventions like ICCPR, ICESCR and also, what is important, it addresses particular needs of migrants which are discussed in the following parts of the convention. In contrast to other international conventions, ICRMW distinguishes between the rights of regular and irregular migrants. Irregular migrants are often called illegal, undocumented clandestine, unauthorized, unlawful, aliens without residence status, illegalized people, non-compliant, sans papier (without documents). The term "irregular migration" typically refers to the cross-border flow of people who enter a country without that country's legal permission to do so and also who are not entitled to reside there, either because they have never had a legal residence permit or because they have overstayed their time-limited permit.²⁷

Also ICRMW grants specific rights that are not enshrined in other core conventions; mainly they are: the right not to lose residence or work permit for not fulfilling a contractual obligation (Article 20.1), the right not to have identity papers confiscated or destroyed (Article 21), the right to consular protection and assistance (Article 23), the right to transfer savings and earnings (Article 32) and the right to information (Article 33).²⁸

²⁵ Paul de Guchteneire and Antoine Pécoud, "Introduction: the UN Convention on Migrant Workers' Rights", in *Migration and Human Rights - The United Nations Convention on Migrant Workers' Rights*, op. cit., p. 12.

²⁶ Ibid, p. 12.

²⁷ Definition taken from <http://migrationobservatory.ox.ac.uk/briefings/irregular-migration-uk-definitions-pathways-and-scale>

²⁸ For more information see OHCHR - Regional Office for Europe, *Migrant workers' rights in Europe*, Annex V, p. 79.

ICRMW contains 93 Articles, divided into nine parts:

In Part I the scope of the ICRMW and definitions are introduced. For instance, Article 2.1 defines a “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” Article 4 defines “members of their families” as “persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.”²⁹

Part II includes one article on anti-discrimination notably including the following grounds for non-discrimination: “national, ethnic or social origin”, “nationality”, “economic position”, “marital status” and “other status”. Nationality and economic position are new grounds in comparison with previous core UN human rights treaties.³⁰

In Part III the human rights of all migrant workers and members of their families are listed without distinction if they are regular or irregular migrants. This part is mainly one of the biggest reasons for debate as it primarily restates and underscores “the application to migrant workers and members of their families of corresponding rights spelled out in the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and other core human rights treaties”. Article 34 notes that migrant workers and members of their families have an “obligation to comply with the laws and regulations of any State of transit and the State of employment”, in particular “the obligation to respect the cultural identity of the inhabitants of such States.”³¹

Part IV lists the human rights specifically recognized for regular migrant workers and members of their families, who are entitled to all rights under Part III and fuller and additional rights under Part IV. The distinction between regular and irregular migrant workers was a choice made at the

²⁹ Ibid, p. 10.

³⁰ Ibid, p. 10-11.

³¹ Ibid, p. 11.

time of drafting.³² While recognizing fundamental rights to undocumented migrant workers, the ICRMW elaborates additional rights to documented migrant workers thus favouring and encouraging regular migration. This is also seen as an incentive for migrant workers and employers to respect laws and regulations of States of transit and employment. The reference to “additional rights”, however, has often been misunderstood and misrepresented as “new rights”, which is incorrect.³³

Part V features provisions applicable to particular categories of migrant workers and members of their families, entitled to rights under Parts III and IV. These categories are “frontier workers”, “seasonal workers”, “itinerant workers”, “project-tied workers”, “specified-employment workers” and “self-employed workers.”³⁴

In Part VI, Articles 64 to 71 include general recommendations to States Parties, both as countries of origin and countries of transit and employment. For example, States are encouraged to consult and cooperate on a number of issues: orderly return, resettlement and durable reintegration of migrants, (Article 67); and preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation (Article 68), specifically relevant regarding an international phenomenon such as migration. This Part has often been disregarded by European states, although it clearly contains important information regarding policies dealing with international migration. It is also the operating element of one of the main goals of the ICRMW, the elimination of irregular movements, as stated in its Preamble. Finally, Articles in Part VI are highly relevant to the ongoing inter-state debate at international level on migration and development. The added value of the ICRMW on these issues is illustrated in the work of the Committee on Migrant Workers (CMW).³⁵

Part VII on the application of the Convention details the monitoring system common to each core international human rights Convention, establishing a body of independent experts, the

³² Ryszard Cholewinski, *Migrant Workers in International Human Rights Law - Their protection in countries of employment*, Oxford: Clarendon Press, 1997, p. 138.

³³ OHCHR - Regional Office for Europe, *Migrant workers' rights in Europe*, p. 11, 2011.

³⁴ Ibid, p.11-12.

³⁵ Ibid, p. 11-13.

CMW, mandated to supervise the application of the Convention by States Parties.³⁶ It is interesting to note that Article 74 gives a particular role to the International Labour Office (Secretariat of the International Labour Organization - ILO), in line with the Preamble, which recalls the mandate of the ILO in relation to the protection of migrant workers' rights.³⁷

Part VIII on general provisions contains an important statement in Article 79: "Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention." The sovereign right of States to decide upon who is allowed to enter their territory is clearly affirmed in the first sentence.³⁸

Part IX features "final provisions" that concern technical aspects of the ratification of the Convention. Article 91 allows States to make reservations to the Convention at the time of signature, ratification or accession. However, as for all other core international human rights treaties, such reservations cannot be "incompatible with the object and purpose of the present Convention". Nor may a State ratifying or acceding to the Convention "exclude the application of any Part of it, or, without prejudice to Article 3, exclude any particular category of migrant workers from its application" (Article 88).³⁹

The Committee has approved the following good practices for how States Parties implement provisions of the convention: the creation of a State Ministry responsible for providing information to citizens who plan to emigrate; efforts to maintain only those private recruitment agencies which comply with national legislation. Good practices also include adoption of bilateral agreements between countries of employment and countries of origin in compliance with international human rights and labour standards; establishment of special groups to protect and counsel migrants in transit through the State's territory; the implementation

³⁶ Carla Edelenbos, "Committee on Migrant Workers and implementation of the ICRMW" in *Migration and Human Rights - The United Nations Convention on Migrant Workers' Rights*, op. cit., pp. 100-121.

³⁷ OHCHR - Regional Office for Europe, *Migrant workers' rights in Europe*, p. 13, 2011.

³⁸ Ibid, p. 13, 2011.

³⁹ Ibid, p. 13.

of a regularization programme with the aim of documenting irregular migrant workers; and efforts by countries of origin to extend voting rights to citizens residing abroad.⁴⁰

So, with several exceptions, most of the rights in the ICRMW are present in the treaties and conventions the EU State are members to; nevertheless, the EU Member States do not plan to ratify it. Further on the reasons of non-ratification are analyzed.

1.2.1 Non-ratification of ICRMW by EU States

In Europe, the ICRMW was not so positively received at first. Some South European States planned to ratify it, others radically opposed. For instance, Italy, Spain and Portugal had not yet become immigration countries when the ICRMW was ratified and adopted, but anyway they had a much more positive approach, which was later replaced by consensual neutrality. Germany did not change its attitude from the beginning, i.e. that it would not ratify the Convention. For a long time EU states have reached de facto the consensus of non-ratification. As one of the explanations, countries state that the EU migration policy has developed into a core field of EU legislation and does not need any convention to ratify it. Nowadays it is already accepted that the ratification of even one EU Member State would become significant not just on a national level in Europe, but would also trigger interest throughout the world.

In fact, the lack of ratification by EU Member States is seriously undermining the credibility of their external policy efforts to promote the improvement of human rights situations in other parts of the world by encouraging or exhorting non-European States to ratify other international human rights instruments. Moreover, the non-ratification of the ICRMW remains the most glaring omission on the part of the EU Member States, given that all EU Member States have ratified most of the international and regional human rights treaties and make efforts to respect them. The fact that EU Member States fail to maintain this level of commitment when it

⁴⁰ International Steering Committee for the Campaign for Ratification of the Migrants Rights Convention, Guide on Ratification - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Geneva: 2009, p. 28.

comes to the rights of third-country nationals gives rise to critical appraisal of the consistency of their (and the EU's) internal and external human rights policies.⁴¹

Recently, Ban Ki-Moon, Secretary-General of the United Nations, told the Council of Europe of his disappointment about Europe's lack of ratification and the implications that this has for migrants' rights: "Here in Europe, ratification of the Convention on the Rights of Migrant Workers and their Families has been disappointing. Twenty years after it was adopted, none of Europe's largest and most wealthy powers have signed or ratified it. In some of the world's most advanced democracies ... among nations that take just pride in their long history of social progressiveness ... migrants are being denied basic human rights."⁴²

It is significant to mention that the reluctance of the EU to ratify the ICRMW also concerns other conventions concerning protection of the rights of migrants, such as ILO Conventions Nos. 97 on Employment and 143 - Supplementary Provisions. It is not only at international level, but also at regional level: only six countries - France, Italy, the Netherlands, Portugal, Spain and Sweden - have ratified the European Convention on the Legal Status of Migrant Workers (ECLSMW). In addition, similarities also emerge as to the reasons put forward by EU states for not ratifying the ILO Conventions and the ICRMW.⁴³

On 9 January 2009, the Parliament called "on the Member States to ratify the United Nations Convention on the Rights of Migrant Workers, and drew their attention to the fact that most people who work without being in possession of the appropriate immigration documents are doing work which is legal and essential to Europe's economies, such as fruit picking, construction or maintenance work, and care of the sick, the elderly and children".⁴⁴ It additionally claimed not to use the term "illegal immigrants" instead of it to say "irregular" or "undocumented" migrants to eliminate negative connotations.

⁴¹ Paul de Guchteneire and Antoine Pécoud, "Introduction: the UN Convention on Migrant Workers' Rights", in *Migration and Human Rights - The United Nations Convention on Migrant Workers' Rights*, op. cit., p. 26.

⁴² Speech by Ban Ki-Moon, Secretary-General of the United Nations (Strasbourg, 19 October 2010), available at http://www.coe.int/t/dc/press/news/20101019_speech_ban_ki_moon_EN.asp

⁴³ Ryszard Cholewinski, *Protecting Migrant Workers in a Globalized World*, Migration Information Source, March 2005, <http://www.migrationinformation.org/Feature/display.cfm?id=293>.

⁴⁴ European Parliament, Resolution on the situation of fundamental rights in the European Union 2004-2008, INI/2007/2145, 14 January 2009, point 158.

It is interesting to note that in 2009, the European Parliament pointed to the fact that irregular migrant workers are in fact contributing to European economies. In 2007, UNESCO published a study on the obstacles to ratification of the ICRMW by European States, as part of a series on obstacles to ratification. The study was based on seven country reports (France, Germany, Italy, Norway, Poland, Spain and the United Kingdom) and aimed at identifying the main common and country-specific obstacles to the ratification of the Convention, in order to draw up a series of recommendations to overcome them. The UNESCO study showed that legal obstacles invoked by States as reasons not to ratify derived from incompatibilities between the current national legislations or overarching principles, and the content of the ICRMW. The study also concluded that, although these concerns over the content should be taken into consideration, the obstacles did not prevent ratification as they could easily be overcome, either by modifying national legislation, or by making reservations to the ICRMW while ratifying.⁴⁵

Financial, administrative and political reasons are discussed further on in the paper. It is evident that the European protection system is relatively weak in the protection of migrants' rights. It does not only concern the non-ratification of the ICRMW, but also several ILO Conventions. Hence, it is important to discover the reasons for this and advocate for public recognition of the convention.

1.2.2 Three Main Perceived Legal Obstacles for Non-Ratification

As mentioned above, there are three main perceived legal obstacles for non-ratification of the ICRMW: political, financial and administrative.

Preserving the sovereignty of States on their territory remains a crucial aspect of State prerogatives. Hence, the right of States to decide who can and cannot enter and remain on their territory is of utmost importance. At the level of the EU, this sovereign right of States is protected by Article 79(5) of the Lisbon Treaty that explicitly states that EU Member States retain the sole right to determine “volumes of admission” for work purposes.⁴⁶ It seems that the sovereign right of States to decide upon who enters their national territory would be limited by

⁴⁵ Rights of Migrant Workers in Europe, UN Human Rights Office of the High Commissioner, P.17, 2011.

⁴⁶ Elizabeth Collett, *Beyond Stockholm: overcoming the inconsistencies of immigration policy*, op. cit., p. 38.

international law in two areas, namely the admission of their own citizens, and the admission of refugees under the international asylum protection framework.⁴⁷ In that respect, Article 8.2 of the ICRMW protects the right of migrant workers and members of their families to re-enter and remain in their State of origin, i.e. “the State of which the person concerned is a national” (Article 6). In addition, the right to leave and return to one’s own country is protected by Articles 13.2 of the UDHR and Articles 12.2 and 12.4 of the ICCPR; in these provisions, “his own country” is broader than the concept of “country of nationality” and the right to return to one’s own country encompasses the right of “long-term resident migrants” to return to their host country.

The fear that the ICRMW would breach the sovereign right of States to decide upon entry and stay of third-country nationals on their territory has been frequently listed as a major issue for European states. According to this argument, the ICRMW, by recognizing certain rights to migrant workers and their families, would limit the freedom of States to decide on visa, residence and work permit criteria. In addition, Article 35 “protects” the right of States to decide on regularizations; Article 34 “protects” the laws and regulations of the States Parties, and the cultural identity of their inhabitants; Article 22 “protects” the right of States to decide to return irregular migrants on an individual basis. In fact, the contrary is included in the ICRMW in Article 79 that reads:

“Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.”⁴⁸

Therefore, it means that sovereignty is not a valid argument for non-ratification and the rights of the States’ regulation of migration flows.

⁴⁷ Brian Opeskin, *The influence of International Law on the International Movements of Persons*, Human Development Research Paper 2009/18, United Nations Development Programme, 2009, p. 7.

⁴⁸ From International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990. <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

Regular versus irregular migrants

The ICRMW protects both regular and irregular migrant workers and their families. Part IV of the convention mainly addresses additional rights for irregular and regular migrants. As a result, rights recognized to irregular migrant workers have been more recently cited by States as an obstacle to ratifying the ICRMW. Two main aspects regarding irregular migrant workers in the ICRMW can be identified in the state's reluctance to ratify the ICRMW. These are the fact that the ICRMW recognizes rights to irregular migrant workers, and the argument that the ICRMW does not help prevent irregular migration. All European states that have been reviewed in the UPR received one or several recommendations to ratify the ICRMW. In all the answers given by European States that sought to justify not ratifying the ICRMW, mention was made of the fact that the ICRMW protects the rights of irregular migrant workers or does not distinguish between regular and irregular migrant workers. This is found, for instance, in the answer that The Netherlands gave to the members of the Human Rights Council (hereinafter HRC) in April 2008 during the first session of the UPR: "The Kingdom of the Netherlands has not signed this convention because it is opposed in principle to rights that could be derived from it by aliens without legal residence rights. The Kingdom of the Netherlands therefore cannot support this recommendation." ⁴⁹

These arguments are excuses, but unconvincing ones. Firstly, all European States concerned have ratified other core international human rights treaties that protect migrant workers' rights even when they are undocumented. In particular, European States have all ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); and they have all ratified the European Convention on Human Rights (ECHR). Under these treaties, the States are bound by international obligation to respect the human rights of all individuals, including that of irregular migrant workers' rights. Most Articles of the ICRMW applying to irregular migrant workers and their families have corresponding provisions in other core international human rights treaties that

⁴⁹ The International Convention on the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

EU Member States have ratified. In addition, the right not to lose residence or work permits for not fulfilling a contractual obligation, protected under Article 20.2 of the ICRMW, is contained in Article 8.1 of ILO Convention N° 143 (Revised) ; Article 2 of ILO Convention N° 97 (Revised) protects the right to information contained in Article 33 of the ICRMW. Only the right to transfer savings and earnings, the right to consular protection and assistance, and the right not to have identification documents confiscated or destroyed, which are recognized to irregular migrant workers under expressly formulated provisions, do not have explicit corresponding rights in other international human rights instruments. This does not mean however, that other treaties may not be interpreted as protecting these rights. In fact, all of these three specific rights spelt out in the ICRMW could be seen as declensions of more general human rights. All European States have comprehensive legislation and mechanisms to protect, including in practice, the right to life, right to integrity of the person, prohibition of torture, prohibition of slavery and forced labour, and right to liberty and security; these also apply to irregular migrant workers and their families.⁵⁰

In addition, most European States do “grant” rights to irregular migrant workers that are more contentious from the perspective of States. As the analysis of national legislation and practices shows, rights that are protected under most national law include the right to health (at least emergency health care), the right to education, and the right to be regularized under certain conditions. Access to and effective implementation of these rights can often be questioned when it comes to migrant workers in an irregular status. However, these rights are “recognized” in national law.

It seems therefore illogical to refuse to sign the ICRMW on the grounds that it recognizes rights to irregular migrant workers in general, without being more specific as to the rights that actually cause problems with regard to national legislation. Even though international human rights obligations extend to the actual and effective enjoyment of the rights internationally recognized, as far as ratification is concerned, the gap between this and the rights recognized in principle should not prevent ratification. In fact, in most cases, ratification is a step towards

⁵⁰ David Weissbrodt and Stephen Meili, “Human Rights and Protection of Non-Citizens: Whither Universality and Indivisibility of Rights?”

bridging such a gap. Beyond this, the very nature of human rights is that they are universal; they apply to all human beings. The *raison d'être* of the ICRMW is to stress that, whatever their status, migrant workers and members of their families are entitled, as human beings, to basic human rights. The scope of the ICRMW covering all migrant workers and members of their family (limited to Part III) is in fact a reason to ratify the ICRMW: it is the first international instrument that protects the basic human rights of all migrant workers. The term “irregular migrant workers” covers a variety of situations. The irregularity of migrant workers can have different sources: working without work and/or residence permits; non-registration at social insurance institutions; non-registration at tax institutions, violation of workers’ rights, insufficient registration of the employment contract, irregular extension of a regular work permit, “pseudo-self-employed”, violation of trade regulations, “pseudo-companies”, and organization in membership associations.⁵¹

Consequently, there are different degrees of irregularity, as there is a difference between breaches of employment and labour regulations and breaches of regulations on residence and visa procedures, the former being considered as “semi-compliance”. It is also important that many irregular migrant workers are those who have entered regularly in the country, but subsequently lost their legal status. In the case of Italy, for instance, it is estimated that only 25 per-cent of irregular migrants present in the country entered irregularly, whereas 75 per-cent entered regularly but became undocumented after losing regular status.⁵²

In fact, many irregular migrants lost their legal status and sought to maintain it, but they were not able to pass various complications created by oppressive or uncompromising demands of State bureaucracies.

Irregular migration. Among the obstacles to ratification, states often mention that the ICRMW supports irregular migrants, instead of contributing to reducing their number. This argument shows that the EU Member States are not eager to grant rights to irregular migrants in their

⁵¹ Michael Jandl, Christina Hollomey and Anna Stepien, *Migration and Irregular Work in Austria*, 2007, p. 17.

⁵² Caritas/Migrantes, *Immigrazione. Dossier Statistico 2005. XV Rapporto sull’immigrazione*. Rome, Idos, p. 121; cited in Graziano Battistella, “Migration and human rights : the uneasy but essential relationship”, in *Migration and Human Rights - The United Nations Convention on Migrant Workers’ Rights*, op. cit., p. 64.

opinion it is equal to encouraging migration, especially of the irregular type. However, this perception is neither based on the content of the ICRMW, which stipulates the opposite view, nor on research that shows that irregular movements are not influenced by the degree of protection of human rights in host countries. Also, the benefits of economies due to irregular immigrants are increasingly documented.

The principled position of States against irregular migration often contrasts with their non-action about irregular employment of migrant workers.⁵³ What Cholewinski and MacDonald rightly recall, is that EU and EU Member States migration policies do not share the same philosophy as the ICRMW.⁵⁴ The EU's deep concern is the regulation of migration flows, whereas the ICRMW is based on a human rights approach. But, the utility of the ICRMW in the combat of illegal/irregular persons and the guarantee that ratification of the convention does not go against the will of many States to control migration movements and reduce irregular ones is clear.

The “right” to family reunification. The ICRMW does not protect the right to family reunification. Article 44 protects the right of the unity of the family of migrant workers who are documented or in a regular situation. It encourages States Parties to “take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers” with members of their families. The wording of that Article cannot be understood as a right to family reunification. In particular, read together with Article 79 that guarantees the right of States to decide upon who enters their territory, it is clear that the ICRMW, while encouraging family reunification, leaves a reasonable margin to States to decide whether and how to protect the unity of the family. Here again, reluctance of States regarding family reunification is based on misconceptions of the ICRMW.

Financial and Political Obstacles. Among other issues stated by EU states concerning non-ratification are financial costs, for instance, the transfer of remittances by migrants, as stated by France. Article 47 of the ICRMW encourages States Parties to “facilitate those transfers”, which

⁵³ Kristina Touzenis, “Migration and human rights in Italy: prospects for the ICRMW”, in *Migration and human rights: the United Nations Convention on Migrant Workers’ Rights*, op. cit., p. 345.

⁵⁴ Euan MacDonald and Ryszard Cholewinski, “The ICRMW and the European Union”, in *Migration and Human Rights - The United Nations Convention on Migrant Workers’ Rights*, op. cit., p. 375.

means that states must reduce taxes received from banks and the State on the flows of remittances. Another reason that is mentioned frequently is the effective implementation of the convention. General financial concerns are often invoked by “new” EU Member States that were traditionally countries of origin and therefore, have not yet put in place a framework to deal with migration issues in their entirety.

Policy trends, public opinions, pressure and decision-makers’ choice are other reasons of non-ratification. The European argument, as it is presented by Member States rests on the claim that, although it might legally be possible for individual states to ratify, it can only be done in coordination with other EU Member States. The argument suggests that ratification could be undertaken only by the EU as a whole (or at least by a significant group of EU Member States).

The perception of migrants in public opinion and the media, in comparison with other vulnerable groups protected under specific core international human rights treaties (such as women and children), plays a decisive role in the reluctance of states to ratify the ICRMW. As demonstrated by Euan MacDonald and Ryszard Cholewinski, the cultural and philosophical representations of migration in Europe do not contribute to spreading a positive image of “the migrant”.⁵⁵ This is somewhat surprising, given that Europe was an important source of emigration up to the mid-20th century.

In the international context, the blatant lack of political will of European States to recognize the importance of the human rights of migrants has created a double standard; while they demand that other States respect their international human rights obligations, they refuse to be bound by international human rights obligations regarding migrant workers. The systematic reminder of this double standard in the recommendations made to EU Member States within the process of the UPR is a welcome step.

From all the challenges discussed there were merely no convincing and valid arguments for non-ratification of the ICRMW. It is the only international convention where the rights of all migrants and their families are presented in one document. Though combating illegal migration

⁵⁵ Euan MacDonald and Ryszard Cholewinski, *The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: EU/EEA Perspectives*, op. cit., p. 64.

is advocated there, the convention clearly distinguishes the rights of regular and irregular migrants, respecting the rights of the latter and granting regular migrants with several rights not included in EU legislation, for example, the right not to lose residence or work permits for not fulfilling a contractual obligation, the right to transfer savings and earnings, etc.

The next chapter will reveal how well the rights of migrants are protected in practice, if the rights mentioned in these conventions are violated, focusing on the connection of integration and anti-discrimination.

CHAPTER II

Integration vs. Discrimination: EU Migration Policy

2.1 Integration Policy: integration tests, barriers, indices

Migrants frequently face difficulties when trying to advance economically. The reasons may be different, but this chapter focuses on the most frequent challenges they face because of discrimination based on the ground of religion, including developing Islamophobia, and the nexus with ethnic origin, race and skin colour. The study will show how discrimination and integration are connected with each other, how they enforce each other.

Unemployment rates are higher among first and second generation migrants , and also their salaries are lower than that of natives, which is a serious challenge for integration. According to the Canadian political philosopher Will Kymlicka, “integration occurs when all barriers to full participation in a society have been dismantled”.⁵⁶ Nevertheless, one should not confuse integration with assimilation, because it is not the matter of elimination of cultural identity, but rather preserving it and accommodating a new culture, society and its rules. Thus, the goal of host countries should be providing means for their integration, being it language courses, housing, health care and other important aspects, including non-discrimination towards immigrants, especially demonstrated in the labour-market. For instance, many authors state that in Germany so-called guest workers are more often in low-skilled positions than natives, even if they can contribute with a higher level of human capital. Scholars carried out correspondence tests, the results of which have shown that such discrimination is based on immigrant status, religion (especially if it is Islam) or region of origin. According to researchers Hainmueller & Hangartner, the level of assimilation or job qualifications were not key factors for Swiss employers. The applicant’s region of origin was a main predictor for rejection or acceptance, most frequent cases of rejection occurred with people from former Yugoslavia and Turkey.⁵⁷

In recent years, populist right wing forces which argue that cultural difference is a threat to the successful integration of migrants, has gained ground against the liberal narrative, which

⁵⁶ Will Kymlicka, *Multicultural Citizenship*, P.15-17, 1995.

⁵⁷ Hainmueller, Jens and Hangartner, Dominik, *Who Gets a Swiss Passport? A Natural Experiment in Immigrant Discrimination*, 2000.

considers that the root of integration failures lies in unequal economic opportunities and discrimination.⁵⁸ Moreover, since Muslim migration has become controversial, particularly in regard to their cultural integration, it is of great importance to examine these communities when looking at the reciprocal influence between cultural distance and economic discrimination. As employment is one of the constituent parts of social and economic rights, hence discrimination in the labour market is probably the most crippling economic barrier to integration in the host society. It has a big impact on migrants' income which influences their consumption patterns (investment, buying clothes, movies, books, etc.), consequently, limiting their financial capacity to imitate the behaviors of natives and their access to the culture of the host society.

There are many studies which have examined the situation of Muslim migrants. Researchers Berthoud and Blekesaune have conducted a survey of the British labour market. As the major ethnic community in the UK is Pakistani and Bangladeshi, first they observed unemployment rates among them and found out that the rates are higher than those among non-Muslim migrant groups. Analyzing the possibility of being employed, they found a negative effect particularly for Muslims and concluded that discrimination in the British labour market was not only ethnic, but also along religious lines. The Open Society Institute also finds evidence of religious discrimination, which, together with other kinds of discrimination (origin, skin color, gender) and factors (lower human capital endowment, individual preferences, etc.) explain the poor integration of Muslim workers into the mainstream labour market.⁵⁹

Sociologists started to investigate the phenomenon of cultural integration more than a decade ago, developing theoretical models on identity⁶⁰ or cultural transmission⁶¹ choices. The field of exploration is expanding quickly and specialists likewise face constraints when capturing a multidimensional phenomenon like cultural integration. Before studying migrant cultural integration it will be better to use a quantitative approach and consider several questions. First,

⁵⁸ Kohler P., *Economic Discrimination and Cultural Differences as Barriers to Migrant Integration: Is Reverse Causality Symmetric?*, 2012.

⁵⁹ Report of Open Society Institute - OSI - (2010) *Muslims in Berlin*, Budapest: Open Society Foundation.

⁶⁰ George A. Akerlof & Rachel E. Kranton, *Identity Economics: How Our Identities Shape Our Work, Wages, and Well-Being*, 2000.

⁶¹ Bisin, Alberto & Verdier, Thierry, *A model of cultural transmission, voting and political ideology*, European Journal of Political Economy, 2000.

what dimensions do exist and how may they be measured? Analysts tried to develop indices of cultural integration or cultural distance. Zimmermann, for instance, proposed a weighted index (“ethnosizer”) that captures a person’s ethnic identity. This index is a function of individual characteristics and behaviors related to 1) language 2) culture 3) ethnic self-identification 4) ethnic interaction and 5) migration history.⁶²

Theoretically, causality in the connection between economic discrimination and cultural distance occurs two ways: while economically segregated people may themselves reject the cultural codes of the majority and find a refuge in their ethnic group, it is also true that stemming from a foreign culture they can find it more complicated to comprehend and adapt to professional codes in the host country in order to be selected for a job.

Across Europe many countries have developed tests which aim to check how well migrants are integrated into society. Some argue that these tests are associated more with no-immigration policies than with fostering active citizenship, while others think tests are based on exaggeration of certain incidents like female genital mutilation or forced marriages. The most significant debate goes around the illiberal nature of the integration tests, i.e. the tests promote such values or a vision which may be inconsistent with the freedom of choice to perceive one’s idea of the good with that of a state. Consequently, such tests may pull in different directions: integration that is meant to include comparisons with the integration as a means of exclusion and assimilation. As indicated by Liav Orgad’s categorization, there are certain test questions not evaluating one’s knowledge and comprehension of the host society’s lifestyle, but explore their moral perceptions. They analyze the migrant’s reaction and perception of ideas like homosexuality, nudism and religious conversion. As long as these questions are included in the test, they may be a source of ideological exclusion.⁶³

In order to understand why foreign born people are discriminated in the labour market or are treated differently from natives, it may be necessary to look not only from the perspective of

⁶² Zimmermann K. F., *Ethnosizing Immigrants*, Journal of Economic Behavior Organization, vol. 69(3), 2006, P. 274-287.

⁶³ Liav Orgad, “Five Liberal Concerns about Citizenship Tests,” in *How liberal are citizenship tests?* 2010, P.21

individuals who are or are not employed, but also to take into consideration the decisions and explanations of employers. However, research suggests that there is a discrepancy between what employers claim about their own behaviour where discrimination is concerned and their actual hiring decisions.⁶⁴ It is obvious that discrimination is a very sensitive issue; hence, it is not likely that employers would be fair and confess their own attitudes when interviewed by a researcher.

The first scientifically conducted field research measuring discrimination in the Swedish labour market was a situation test performed by the Swedish Board of Integration on behalf of the International Labour Organisation in 2005-2006. Carlsson & Rooth published results from a correspondence test in 2007 and Eriksson & Lagerström have tested for whether applications with foreign sounding names are contacted less frequently by employers on an internet based web site where applicants are looking for jobs passively by displaying their CVs on the job site. The results of these experiments suggest the existence of ethnic discrimination in the Swedish labour market.⁶⁵

As already mentioned, many European countries had not accepted the fact that they had become immigration countries which was an excuse for not building integration policies. North-Western European countries had already 'solved' the contradiction of claiming themselves non-immigration countries and accepting people in the 1950s and 1960s by calling these migrants 'temporary guests'. They had provided limited facilities for accommodation supposedly expecting their eventual return. In any case, here, too, the fact that a noteworthy part of migrants stayed and formed groups that continuously developed into big communities by utilizing their rights to bring family members, contradicted expectations and desires. Some national governments faced these tensions early and started a type of strategy of coordination or integration, as did Sweden in the mid-1970s and the Netherlands in the mid-1980s. Most

⁶⁴ Pager, Devah, and Lincoln Quillian. 2005. "Walking the Talk: What Employers Say Versus What They Do". *American Sociological Review* 70(3):355-380.

⁶⁵ Eriksson, S, Lagerström, J, (2007) "Detecting discrimination in the hiring process: Evidence from an internet-based search channel", *Working Paper 2007:19*, IFAU.

countries acknowledged the need to formulate ‘integration policies’ much later in the 1990s, often hesitantly and partially.⁶⁶

The fact that inclusion of long-term residents was very necessary for sound and cohesive societies could especially be seen in the early policies of states like Sweden and the Netherlands. Those states were inspired by a philosophy of equality and equity in a welfare state context and they already accepted being immigration countries, but with a restrictive migration policy. At that time it was considered to be a necessary condition to prevent too much and continuous immigration for a successful integration policy. Those early integration policies were more or less rights-based as they included both social, economic and political, cultural domains of life.⁶⁷ Nevertheless, for many other European national governments such policies went too far and they were eager to preserve ad hoc adaptive measures, in most cases giving the integration responsibility to parties in civil society, such as trade unions, churches and welfare organizations.

In 2004, nineteen research organizations from ten EU countries established the IMISCOE⁶⁸ Network of Excellence, whose task it is to develop an infrastructure for research in the domain of international migration, integration and social cohesion by developing a coherent, multidisciplinary, cross-national comparative research programme.

In May 2012 the King Baudouin Foundation, together with its partners and the Migration Policy Group, set out to test whether integration policies matched the hopes and needs of immigrants across Europe. The research was called “How Immigrants Experience Integration?”. They also set out to test whether a targeted survey could capture the personal experiences of people as diverse and hard-to-reach as immigrants from outside the EU. Immigrants’ social and economic participation depends on the interaction of many factors. These factors range from personal characteristics and skills, such as language proficiency and qualifications to structural problems in the labour market. These include discrimination and occupational segregation,

⁶⁶ Penninx, Rinus (2005), ‘Integration of migrants: Economic, social, cultural and political dimensions’, in M. Macura, A.L. MacDonald & W. Haug (eds.), *The new demographic regime. Population challenges and policy responses*. 137-152. New York/Geneva: United Nations.

⁶⁷ R. Penninx, *Integration processes of migrants: research findings and policy challenges*, 2007.

⁶⁸ International Migration, Integration and Social Cohesion in Europe (IMISCOE) is a research network funded by the Sixth Framework Programme of the European Commission.

informal employment, temporary work, and the recognition of qualifications. In the long term, European labour markets cannot afford to miss out on the full potential of immigrants, women, the elderly, the young, and other vulnerable groups. The migrants' employment situation is analyzed by many sociologists and policy-makers. Unemployment and employment rates were the first indicators which showed the level of integration, as national databases were improved and new EU and international sources were developed. National and international organisations, such as the International Labour Organization (ILO), also pioneered data collection on discrimination in the labour market and other areas of life.

The few EU governments that extensively use evidence to improve integration policies most often turn to findings on migrant employment and education, according to analysis from the 2010 Migrant Integration Policy Index (MIPEX).⁶⁹ In 2004 at European level employment was claimed the common basic principle for immigrant integration policy in the EU and 'key' and 'central' for their integration and visible contributions in society. Likewise, the European Commission and Member States highlighted employment as the first central point for the EU's 2010 Zaragoza Indicators of Immigrant Integration. The pilot indicator results show that non-EU citizens and those born outside of the EU, especially women, often have higher rates of labour market inactivity, unemployment, and over-qualification. Therefore, as part of the EU2020 plan, the EU Member States decided to involve the better integration of legal immigrants and set up several goals: raising the employment rate for working-age men and women to 75%; reducing the number of people at risk of poverty by 20 million.⁷⁰

The Immigrant Citizens Survey (ICS) compared statistics with immigrants' subjective self-assessments of the situation in the labour market. A similar survey was carried out in 2008 by another organization, wherein specific immigrant groups in Europe talked about their experiences of discrimination. ICS focused on interviewees' ambitions, negative and positive experiences, as well as challenges regarding their jobs and training. The questions were: in which country and what problems did they encounter while searching for a job; did they feel

⁶⁹ Migrant Integration Policy Index (MIPEX) is a unique tool which measures policies to integrate migrants in all EU Member States, Australia, Canada, Iceland, Japan, South Korea, New Zealand, Norway, Switzerland, Turkey and the USA.

⁷⁰ Organization for Economic Co-operation and Development (OECD), <http://www.oecd.org/migration/mig/>

overqualified for their jobs. According to the 2010 MIPEX, many immigrants benefit from only 'slightly favourable' policies on labour market mobility due to unequal treatment (France and, until recently, Germany), little targeted support from the state (Italy and, until recently, Portugal and Spain), or both (Belgium and Hungary).⁷¹

Non-EU citizens are mostly treated equally in new countries of immigration such as Italy, Portugal, and Spain; whereas in Belgium, France, and Germany particular jobs and sectors are closed to them. France and Germany also impose obstacles for the recognition of foreign qualifications. Europe's generally weak targeted support for immigrant workers is starting to improve. For example, Belgium, France, and Germany are now providing training packages tailored to newcomers. Portugal and Spain have created specific funds and strategic plans to support many job and training services.⁷²

According to the survey of Migration Policy Group, a large number of immigrants encountered one or more problems while seeking employment: discrimination and language problems, some personal constraints, unrecognized foreign qualifications or problems with contracts. Immigrants in southern European cities cited another structural problem besides job security - employers offered no legal contract to between 21 and 48% of all immigrants in these cities and the immigrants were accepted for employment informally without signing a contract. In contrast, immigrants in northern European cities pointed to the way that they were treated on the labour market: two major perceptions were that employers discriminated against them (29-44%, lower in German cities) or did not recognise their foreign qualifications (31-41%). Immigrants occasionally cited problems related to their individual skills and status. Language ranks among the two biggest problems for non-native speakers in Antwerp, Budapest, Lisbon, Faro, Stuttgart, and the two Italian cities. Smaller numbers mentioned personal constraints such as time, costs, and family (e.g. 18% in Budapest) or a limited right to work (e.g. 13% in Barcelona and 17% in Madrid).⁷³

⁷¹ Statistics taken from <http://www.mipex.eu/labour-market-mobility>

⁷² www.immigrantsurvey.org/downloads/ICS_ENG_Full.pdf

⁷³ Laitinen I., *The European Immigration and Asylum Policy: Critical Assessment Five Years After the Amsterdam Treaty*, Bruylant, Bruxelles, 2005.

For decades, a variety of players have undertaken initiatives to offer free courses to immigrants and specific target groups (e.g. refugees, women). Official state language and integration courses only began in the 1990s. Official integration programmes are now being developed in Italy and discussed in Catalonia and Wallonia. Compulsory integration programmes come with little or no costs in the Belgian region of Flanders (Inburgeringstraject), France (Contrat d'accueil et d'intégration) and Germany (Integrationskurse). The language offer is most extensive in Germany (600-1,200 hours). All offer some form of social orientation, including an initial skills assessment in France and a career orientation in Flanders. Free voluntary language courses are provided in Portugal (Português para Todos – PPT) and Spain, especially in Catalonia. In the Belgian region of Wallonia, reading and writing courses promote language learning among various target groups. In Hungary, NGO and language school courses are more limited.⁷⁴

It is clear that not all EU Member States have succeeded in successful integration of migrants: some have strict rules of language knowledge, some have practiced discrimination in the labour market, others have not fulfilled integration programmes well. Further on some important indicators of integration are discussed.

2.2 Long-term residence as an indicator of integration

Integration is a long term process. The more inclusive the integration policy is, the more migrants want to become long-term residents. After a few years' residence most temporary immigrants may decide if they want to settle permanently in the country. Long-term or permanent residence secures their residence status and guarantees that they should be treated equally as nationals and EU citizens, with the same rights and responsibilities. Long-term residence is rarely raised in the public debate and in some countries obtaining long-term residence is as equally difficult as getting citizenship. The Migrant Integration Policy Index (MIPEX) confirmed that there were few improvements to long-term residence between 2007 and 2010. At EU level, the European Commission published a 2011 report deploring the weak impact

⁷⁴ Survey done by The King Baudouin Foundation and Migrant Policy Group www.immigrantsurvey.org/.../ICS_ENG_Full.pdf

of the EC long-term residence directive in most EU Member States.⁷⁵ The EU Member States recently agreed that the share of immigrants who acquired permanent or long-term residence was a core indicator of integration outcomes (Zaragoza indicators), since active citizenship supports immigrants' integration, participation in the democratic process, and sense of belonging.⁷⁶

Residence statuses are becoming easier to compare across European countries, in part due to EU legislation (e.g. EC long-term residence Directive 2003/109) and better European statistics (e.g. Regulation 862/2007). Still, comparatively little is known about long-term residents and how this status fits into immigrants' pathways to integration and settlement. The Immigrant Citizens Survey explores the links that immigrants see between a secure legal status and their social integration. Similar to the questions on family reunion, surveyed immigrants were asked whether they applied or wanted to apply for some form of national long-term or permanent residence.⁷⁷

The 2014 Migrant Integration Policy Index (MIPEX) identified 'slightly favourable' pathways to long-term residence (scoring 60+/100) in all EU member states, except France (scoring 48/100), Germany (scoring 50/100), Slovakia (scoring 54/100) and Austria (scoring 57/100).⁷⁸ The eligibility requirements for settlement and long-term residence differ significantly across the countries. The maximum residence period for the EC long-term residence permit is five years. This period is sometimes shortened for recognised refugees, beneficiaries of subsidiary protection, highly skilled workers, family reunion permit holders, or graduates of the country's higher education system. However, governments may exclude certain legal categories of non-EU temporary residents from applying. They may also impose requirements for long-term residence that are equally or more demanding than for citizenship, as is the recent European

⁷⁵ . For more, see www.mipex.eu/blog/commission-deplores-weak-impact-of-eulong-term-residence-directive

⁷⁶ Eurostat, Indicators of Immigrant Integration: A Pilot Study, (Luxembourg, 2011) ISSN 1997-0375.

⁷⁷ www.immigrantsurvey.org/.../ICS_ENG_Full.pdf

⁷⁸ Results taken from <http://www.mipex.eu>

trend for language requirements.⁷⁹ According to statistics, it is clear that France and Germany have more eligibility restrictions, whereas the legal conditions are most inclusive in Belgium, Hungary, and Spain. There is no other MIPEX country like Germany which imposed many conditions, while one can hardly find any restricted eligibility as much as in France. Portugal only implemented a 'slightly favourable' pathway to long-term residence with the 2007 Immigration Law. Belgium and Spain have recently improved conditions and access to long-term residence statuses. Italy has worked on a new 'points system' putting emphasis on new language and integration requirements. Immigrants who become long-term residents enjoy a rather secure residence status in all EU countries but Hungary and near equal socio-economic rights in all countries except France (job and qualification restrictions for non-EU citizens).

National policies and procedures discourage others from applying and create problems for applicants. The national policy and the local implementation also matter. Immigrants regularly have problems with how authorities use their power in cities in France, Italy, and Portugal, the restrictions on dual nationality in cities in Germany, and the documents required in cities in Germany and Belgium.⁸⁰

Long-term residence matters. Those immigrants who are already long-term residents or citizens feel the difference: they are more settled, improving their job prospects has become easier, and in some cases they get better educated or involved in the community. Nevertheless, they mentioned common personal challenges like language skills, limited time to study, and balancing work and family life or problems with family reunification. Among other factors they also criticized several structural problems which prevent better social integration of many groups in society, such as securing a legal or permanent job contract. It is evident that changes are needed not only in solving those structural problems, but also changes in society and their attitudes, actions of the general public. The results from the Immigrant Citizens survey show evidence of well-known problems, such as discrimination on the labour market, employers' attitudes to foreign qualifications, and limited interest in greater ethnic diversity in politics.

⁷⁹ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_migration/l23034_en.htm

⁸⁰ www.immigrantsurvey.org/.../ICS_ENG_Full.pdf

2.3 Discrimination on the ground of religion and skin colour as limiting integration.

If discrimination occurs, consequently integration fails to a great extent. Integration is meant to be inclusion and not exclusion. To the question, if everybody is effectively protected from racial/ethnic, religious and nationality discrimination, the answer is mostly “no” than “yes”. According to the MIPEX, all EU countries have already slightly favourable laws prohibiting religious, ethnic and racial discrimination. In the past 15 years, the adoption of anti-discrimination laws was the most prominent improvement of integration policy in EU countries. For instance, since 2007 most MIPEX countries have made progress (+10 points in average), except for minor reversals in France and the UK. The most evident progress one can see in new countries of immigration and Central Europe – Czech Republic, Poland, Slovakia. Also statistics show that victims of discrimination are best protected in EU countries with longstanding legislation like in the UK and Portugal and also in new EU member states like Hungary, Romania and Bulgaria.⁸¹

The discrimination of Muslims in employment certainly cannot be viewed through religion only, and the context of ethnicity, gender and other characteristics needs to be taken into consideration. For several years, reports by international institutions like the United Nations and the Council of Europe and also non-governmental organisations like the European Network against Racism have openly criticised the discrimination and marginalisation of Muslims in Germany (UN 2010, CERD 2008, ECRI 2009, ENAR 2011). Although anti-Muslim attitudes have existed in Germany for a long time, a clear shift from xenophobia to anti-Islamic attitudes can be identifiable since the beginning of the 21st century, which is mainly due to the developments in world politics and the debates on terrorism, security, and Islamism.

In 2010 a research team published a paper where they presented the results of their field experiment: they submitted applications for an internship position with Turkish and German-sounding names of imaginary students of economics. With respect to their skills and

⁸¹ More information available at <http://www.mipex.eu/anti-discrimination>

qualifications the candidates were alike, and all of them were fluent in German and possessed German citizenship. Applicants with a Turkish-sounding name received 14 percent fewer positive answers⁸².

When interviewees from Germany and Sweden were asked to expand on the attitudes towards migrants, they all mentioned discrimination against Muslims in the first place, emphasizing the problem of wearing the headscarf for Muslim women as the most problematic issue, and for some of them it was the only identifiable factor in this context. For the interviewee of British Pakistani origin it is self-evident that wearing the headscarf is not acceptable in professional branches where the headscarf does not fit into the so-called occupational image (Berufsbild) of jobs such as a hairdresser or in cosmetics (beauty jobs). The interviewee mentioned also that in the UK anti-discrimination laws are strict and he has seen rare cases of discriminating Muslim women on the issue of headscarf in the field of fashion, for example. This statement also shows that beauty is perceived through revealing one's hair, which hence means that covering one's hair cannot reveal beauty or in other words, it is not compatible with the common understanding of beauty in Western society.⁸³

On the other hand, from the local population we can often hear one explanation similar to what a lawyer and author with Turkish and Kurdish origin, Seyran Ates says in her book *Der Islam braucht eine sexuelle Revolution* ('Islam needs a sexual revolution'). She underlines that not reaching successful integration is connected with blaming Islam as the significant source for existing integration challenges and proclaims the incompatibility of Islam with the Western way of living.⁸⁴

Reading about various discrimination cases in Germany the opinion of an employer on the issue of wearing a headscarf was noteworthy:

⁸² Kaas, Leo & Manger, *Ethnic Discrimination in Germany's Labour Market: A Field Experiment*, Institute for the Study of Labor, Discussion Paper No. 4741, 2010. <http://ftp.iza.org/dp4741.pdf>

⁸³ From the interview of an immigrant, Babur Yusufi. For details, see Appendix 1.

⁸⁴ <http://www.spiegel.de/international/europe/german-turkish-author-seyran-ates-islam-needs-a-sexual-revolution-a-654704.html>

“And if he does not want to have somebody because she is wearing a headscarf, I cannot tell the women: ‘Take your headscarf off!’ Well, one can always try to talk and so. The colleagues are also doing that ‘How important is the headscarf for you now?’ Well, what is in the foreground – getting a job, thus for the personal development of the person?”

This statement clearly demonstrates that it is likely that when they have a Muslim woman applying for a job, who is wearing of a headscarf, the employer is trading off the relevance of wearing the headscarf against the career prospects. Instead of confronting the representative of a job centre with his/her discriminatory actions by pointing out that he/she violates anti-discrimination laws, that he should reconsider his attitude, and focus on the qualifications not the appearance of the applicant, the employer tries to alter (the position of) the victim of discrimination by persuading her to relinquish her headscarf, thus transferring the burden of non-discrimination to the victim of discrimination.

In this context of the controversial headscarf debate it is necessary to mention the Law of Neutrality (Neutralitätsgesetz) which was put in force in 2005. This law is considered to be unique in Germany as it does not allow any religious symbols and signs to be displayed by teachers in public schools and employees of the judiciary and police. In many cases the employers who did not want to employ women with a headscarf claim this law as a justification for not hiring. But except for employers’ position, it is necessary to cite one interviewee’s opinion about the perception of locals over this issue. He finds that when there is a problem with the economy in a country, local citizens believe the few remaining jobs should be for them, consequently, economy and labour market are very related to socio-economic exclusion:

“When immigration is too high, the money in our pockets is what drives a greater sense of nationalism and the less we have, the more discriminatory a nation becomes. The more we have, the more welcoming we are. However, the expectation of many English people is that immigrants should do less skilled jobs. And for the government, for instance, a foreign student is like a ‘cash cow’.” So it is really unfair if we compare what native students pay with what a foreign student pays.

So, as we see the manifestation of one’s religion or culture can become a reason of discrimination and social exclusion. And one of the strongest indicators of successful integration

is long-term residence which shows how well the immigrants feel themselves in the host country and how much they are included or excluded. The issue of headscarf for women was mentioned as the most identifying factor for exclusion. Below, we will touch upon a phenomenon of Islamophobia which is a serious threat for Muslims' integration in Europe.

2.3.1 Islamophobic discrimination limiting migrant integration

Having discussed all these examples it is clear that the percentage of discrimination on the grounds of religion – Islam - is higher than any other ground. A phenomenon developing day by day in Europe is Islamophobia which is a serious threat to integration. Although the first occurrence of the term Islamophobia appeared in an essay by the Orientalist Etienne Dinet in *L'Orient vu de l'Occident* (1922), it is only in the 1990s that the term became common parlance in defining the discrimination faced by Muslims in Western Europe. Negative perceptions of Islam can be traced back through multiple confrontations between the Muslim world and Europe from the Crusades to colonialism.⁸⁵ However, Islamophobia is a modern and secular anti-Islamic discourse and practice appearing in the public sphere regarding the integration of Muslim immigrant communities and which intensified after 9/11. In some important academic studies in France it was used, in spite of the fact that it is still rejected by the Consultative Commission on Human Rights (France Report). If we look at news journals, for instance, in *Le Monde* and *The Guardian*, the term has appeared in over thirty articles in the past year and more than 150 in the past ten. However, a search of *Der Spiegel*, a premier news journal in Germany shows only six uses in the past year. Another term in more regular usage seems to be '*Islamfeindlichkeit*,' which expresses the anti-Muslim sentiment but does not imply the same fear.⁸⁶

There is a large number of Muslim immigrants in Europe: 4.5 million in France, followed by Germany's 3 million, 1.6 million in the United Kingdom, and more than half a million in Italy and the Netherlands. Although there are other nations with populations of less than 500,000, Muslims can be substantial minorities in small countries such as Austria, Sweden or Belgium. The majority of Muslims in Europe come from three areas of the world – the biggest ethnic community of Arabs with approximately 45%, followed by Turkish and South Asian. Although

⁸⁵ Mustafa Cherif, *Islam and the West: A Conversation with Jacques Derrida*: Chicago (University of Chicago Press, 2008), P.38.

⁸⁶ Taken from the interview with Akmal Khan, an immigrant from Pakistan. See Appendix 1.

there are sizable populations of Turks in several countries, the majority is in Germany, while most of the South Asians are in the United Kingdom.⁸⁷

In the United Kingdom, Pakistanis and Bangladeshis had unemployment rates higher than 20%, relative to only 6% in the broader population. Immigrants in general had a 13% unemployment rate. In Germany, the largest Muslim group of Turks had unemployment rates of 21%, contrasted with only 8% among others in Germany. Nationality statistics were unavailable for France, but immigrants had a 22% unemployment rate, compared to 13% for the country as a whole. Immigrant unemployment rates tend to be at least twice that of natives. In the Netherlands, non-Western immigrants had an unemployment rate of 9%, Western immigrants – 4%, and native Dutch - 3%. In Spain, the numbers were closer to equal, while in Italy migrants had only a 7% unemployment rate compared to 11% in the broader population.⁸⁸

Unfortunately, cases of Muslim discrimination may be seen not only in the labour market, but also in education, health care, etc. One of the cases concerning health care occurred with a 16-year-old boy of Turkish origin. A doctor in Baden- Württemberg refused to treat him. The reason according to her was his name “Cihad”, a common Arabic name, but also a term used by Islamic extremist for ‘holy war’. She interpreted his name as a ‘declaration of war against non-Islamists’ and hence, didn't want to treat the patient. At a later date, on the doctor apologized.

Another incident took place in a school, where a 20-year-old African refugee was unable to complete coursework to qualify for university study. The teacher stated that several of the required assignments must be rendered not individually but by a group of students. No classmate wanted him to join their group, so the teacher referred him to one, but they kept excluding him, refused to share information about the joint project and they even did not tell him when and where they met. The boy reported this to the teacher, but did not receive any support. In the end he got sick but anyway submitted a project assignment, accomplished alone. Afterwards, the

⁸⁷ Jocelyne Cesari , “The Securitisation of Islam in Europe”, P.2, Research Paper N14, 2009.

⁸⁸ Tufyal Choudhury, “Muslims and Discrimination” in *European Islam: Challenges for Society and Public Policy*, 77-106 (Brussels: Center for European Policy Studies, 2007).

teacher described his performance as above average, but he had nevertheless failed, because the assignment needed to be done as a group.⁸⁹

Two recent cases of interviewees of Pakistani origin need to be taken for consideration.

“The worst thing for me was to appear in front of the official person responsible for migrants every year to fill in a weird document in the name of security clearance and every year I was asked if I could fly a plane, if I had any sort of military training, if I knew how to use a gun. They asked such questions, as if I was a member of some organization or if I knew somebody from any organization”. With both of them there were incidents in the street where a stranger would confront them for fighting; they could run with the slogan ‘Raus, Raus’ (Away, away). Germans sometimes stared at them as if they were “alien creatures”. One of them lived seven years in Germany studying and working and he noticed several times that locals would give a more difficult, tough work to a migrant than to Germans. The other immigrant spoke also about anti-Islamist organization which organizes meetings in many cities of Germany. Patriotic Europeans Against the Islamization of the West, (PEGIDA- Patriotische Europäer gegen die Islamisierung des Abendlandes) is a political organisation formally registered in Dresden, Germany against the Muslims and their immigrations. Its main motive is to limit the Muslim immigrants in Europe and other countries. They organize weekly protests against Muslims to manifest their discriminatory behaviour. According to what was reported, generally Muslims are excluded through verbal and gestural forms and now they face serious consequences in various cities based on these anti-Islamist movements.⁹⁰

Several years have passed as the countries under review have responded to the threat of terrorism; some of them have renewed and strengthened their security or developed anti-terrorism laws while placing further restrictions on immigration. People often consider that migration and internal and external security policies are connected with one another. However, without highlighting his goal, Sarkozy has made it clear that Islam is central to the legal changes, while arguing that new immigrants ought to accept the publication of religious cartoons in

⁸⁹ An interview from a survey in Bamberg, Germany.

www.efms.uni-bamberg.de/pdf/CDC_Germany_2010_efms.pdf

⁹⁰ From interview with Farhan Ahmad, an immigrant student from Pakistan. See Appendix 1.

newspapers. He added that women must take identity photographs without a headscarf and should accept treatment by male doctors. He also connected the riots of 2005 with changes in immigration law.⁹¹

In the Netherlands, there were at least eighty incidents immediately following the attacks of September 11th. The murder of Theo Van Gogh in 2004 provoked many more responses. In November 2004, a bomb was placed at a Muslim school, another school was burnt down, and a place of worship in Helden was destroyed by a fire set by right-wing youth.⁹²

Referring to the report of Ireland on Islamophobia in 2005 this sentence should be highlighted:

*“For many Muslims, the experience of discrimination and hostility has become so commonplace that they tend to ignore it and not report it, either to appropriate agencies in order to seek a remedy or to monitoring organizations, or to a third party and victim support schemes”.*⁹³

In the study of correlation between integration and discrimination there is an interesting “chicken and egg” issue. Which one is correct: do higher levels of discrimination create a feeling of isolation and lack of integration, or does a lack of integration lead migrants more vulnerable to discrimination? We cannot find an exact answer, because every country has its own experience and practice, but policy makers ought to consider effective measures for countering discrimination and simultaneously stimulating integration in all areas of social life.

If we read various researches and reports on discrimination and Islamophobia, we will see that the indices of migrants’ integration could be lower, if most of the members of targeted groups had reported about discrimination cases. But, unfortunately, more than twenty years first- and second-generation migrants, many of which already became citizens still are treated as ‘others’ or migrants at best, terrorists, Niger, ‘Osama bin Laden’, Islamists at worst, and some of them got used to it and take it for granted. It is nothing more than a sign of frustrated expectations for second generation migrants who were born in the host country, but are treated as

⁹¹ <http://www.theguardian.com/world/2011/sep/19/battle-for-the-burqa>

⁹² C.Joppe, *Islam, Christianity, and Pluralism*, Zaki Badawi Memorial Lecture Series, 2008. P.342.

⁹³ Irish NFP’s report on Islamophobia, May 2005

their parents, the first generation migrants. The recent case of Charlie Hebdo by ISIS (ISIL)⁹⁴ simply raised the level of Islamophobia in Europe, especially one week later after publishing three million copies of provocative illustrations of the prophet Mohammed and terrorists. Going back to earlier incidents, the same happened in 2005 when the Danish newspaper Jyllandsposten published twelve drawings of the prophet Mohammed which afterwards was followed by many other publications in various European magazines. Because of this as a response, including complaints by Islamic governments, there were boycotts of European products, demonstrations, attacks. Moreover, a competition for drawings on themes of Holocaust was launched by an Iranian newspaper. And even now many people defend the propagation of cartoons on the grounds of freedom of expression. Co-editor of the newspaper, Flemming Rose, wrote that in the name of freedom of expression one has to be prepared to submit to “scorn, mockery, and ridicule” and religious feelings cannot be taken into account. Though the public prosecutor decided that Flemming Rose could not be prosecuted, but he also emphasized that the laws on racism and anti-discrimination, blasphemy include protection and manifestation of peoples’ religious feelings, which means there is no free and unlimited access to express oneself about religious issues. In this sense presenting the prophet Mohammed as a symbol of terrorism, as it was presented in one of the cartoons, is no different from drawing Moses as the symbol of right-wing Israelis’ actions against Palestinians. Otherwise, it would be highly condemned and perceived as anti-Semitic which is prohibited by the laws of many European countries.

In addition to the results of different surveys, it is expedient to observe the recommendations from the Committee of Elimination of Racial Discrimination (CERD)⁹⁵ report concerning France and Germany. The Committee observed the situation comparing it to previous times and expressed deep concern on the high level of hate speeches expressed in the Internet. For France, mostly it pointed out the discrimination against Muslims in the labour market, noting also violations of indigenous peoples’ rights in oversea territories, such as New Caledonia and French Guyana, relevant to the rights to self-determination, lands and traditional practices. The

⁹⁴ The Islamic State of Iraq and the Levant, also known as the Islamic State of Iraq and Syria or the Islamic State of Iraq and ash-Sham, or simply as the Islamic State is an Islamic extremist group.

⁹⁵ The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.

situation of migrants, refugees and asylum seekers was also questioned. The Committee emphasized the need of disaggregated statistical data. The Committee welcomed the National Action Plan against Racism and Anti-Semitism 2015-2017.⁹⁶

The Committee also highlighted the narrow definition of racism and racial discrimination in the German law. Racism in election campaigns was urged to be tackled. The Committee expressed concern about activities of racist groups and increasing hate speech. The inclusion and protection measures for refugees and asylum seekers were inquired. The Committee acknowledged discrimination experienced by citizens with migration background as well as LGBTQI⁹⁷ persons belonging to minority groups, including in employment and education. The Committee recognized racial profiling by police as discriminatory.⁹⁸

Recent news on deporting Ukrainian refugees from Finland, killing Myanmar, Bangladesh, Syrian and Libyan refugees surprises us a lot. One of the latest articles called “How the EU is killing refugees” addresses the refugee catastrophe in the Mediterranean. The author states: *“Here, the saving power is by no means growing; it is disappearing – because the EU is allowing it to disappear. The member states of the EU are holding back the saving power, blocking it in. There are, of course, enough ships to rescue the refugees. But the member states of the EU are not making use of them, not letting them sail.”*⁹⁹ Not long ago the president of the EU Parliament Martin Schulz announced changes in refugee and migration policies. But back then what we saw was 368 refugees died on a single day, and a recent tragic case – on their way to Europe 800 people lost their lives. Many EU countries refuse to accept refugees, ignoring Italy’s claims - the only country which accepted more than 180,000 migrants in 2014. The most shocking is that 3,200 refugees lost their lives crossing the Mediterranean.

⁹⁶ <http://www2.ohchr.org/english/bodies/cerd/>

⁹⁷ The LGBTQI community includes lesbian, gay, bisexual, transgender, queer, questioning, and intersex individuals. Information from <http://ru.urbandictionary.com/define.php?term=lgbtqi>

⁹⁸ <http://imadr.org/cerd86-summary/>

⁹⁹ <http://en.qantara.de/content/after-the-refugee-catastrophe-in-the-mediterranean-how-the-eu-is-killing-refugees>

During an interview German Development Minister Gerd Müller claimed that every country in Europe ought to participate in this misery and help Italy. “Solidarity means implementing a quota solution,” Müller said, adding that the question will decide whether the EU is “capable of action.” The latest proposal from the EU has been dismissed by a number of European leaders, including Hungarian Prime Minister Victor Orban, who described the plan as “madness.” Similarly, French President Francois Hollande said a quota was “out of the question.”¹⁰⁰

European misunderstanding of the position of many activists in the Muslim world and the European racism against some Arab and Muslim migrants does not imply the latter are purely victims. It is hard to find a plausible, serene reflection on a problem where one side exclusively feels victimhood. A solution cannot come from the pain of an experience, and risking the emergence of the populist position is very challenging.¹⁰¹ One should realize that remembering various terroristic acts carried out by al-Qaeda, ISIS and struggling to minimize those attacks does not mean the whole Muslim community must be victimized. We should be mature enough in bridging those two virtual worlds. Discrimination faced by migrants and what is more inexplicable, placing at risk thousands of lives of refugees shows the EU that its migration policy and the work of international organizations are not productive and they should take serious steps for better protection of human rights. Probably one of the significant steps must be ratification of ICRMW which yet no EU Member state has not done.

The next chapter will reveal how Armenia, which signed the ICRMW in 2013, is successful in its migration policy and how the European Neighbourhood Policy and EU-Armenia relations have impacted the migration policy management in Armenia.

¹⁰⁰ <http://www.dw.de/germany-italy-push-europe-to-accept-refugee-quota/a-18462904>

¹⁰¹ Saghie, Hazem (2001), ‘Individualism in the Middle East: An overview’, In H. Saghie, The predicament of the individual in the Middle East. London: Saqi Books.

CHAPTER III

Immigration in Armenia.

The Role of ENP in Shaping Migration Framework Policy in the RA

3.1 Immigration flows in Armenia

Data on immigration flows in the Republic of Armenia (RA) exist, but are limited, and not thoroughly analyzed. Among the different sources of immigration data, the activities of the National Statistical Service of the Republic of Armenia (NSS) are central. They include population censuses, carried out every ten years, frequent household surveys, and specific studies, such as the Report on Labour Migration in Armenia, published in 2007.¹⁰² The information on RA de facto and de jure population number, female fertility levels, main sources of subsistence means, population distribution by nationality and age groups, religion, native language, country of citizenship, place of birth was published on 30 April 2013 in the monthly informational report on the "Socio - Economic Situation of RA in January-March 2013". According to the report, from 3018854 population of Armenia the residual foreign population was primarily composed of Russian nationals Russia at 13,348; there are 3,333 are citizens of Georgia; 1495 of Iran; 764 of Ukraine, 544 of the USA, 3809 - people from other countries and 433 people without citizenship.¹⁰³

3.1.1 Impact of the Syrian Crisis on Migration in Armenia

The war in Syria has had a far-reaching impact beyond its borders. With no signs of hope, many Syrians have left the country immigrating to Armenia in search of refuge. As Armenia has had limited resources and a poor economy, the Syrian crisis has impacted it even more. However, Armenia could take some steps to help the refugees, giving many of them shelter. The pressure on the migration services to conquer the influx of refugees also caused gaps in Armenia's migration data management system. Before the current events approximately 100,000 Armenians lived in Syria. Aleppo was one of the prosperous cities and the most affected one

¹⁰² Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007.

¹⁰³ <http://armstat.am/en/?nid=517>

where more than 60,000 Armenians lived, building up a very dynamic Armenian Diaspora. Many refugees left for neighbouring countries hoping that the situation would soon settle down, but unfortunately, the mass inflow to Armenia started in 2012. In the RA many ethnic Armenians expected to get secure and stable refuge. Some part of their influx to Armenia has not been one-sided as there were incomplete families, which after some time returned to Syria. Due to lack of data and government capacity to record migrants' flows, there are partial evaluations on the number of the Syrian Armenians currently residing in Armenia.

As estimated by an interdepartmental monitoring committee, in July 2013 there were 9,500-10,000 Syrian Armenians in the country, but it could be more, if not travel difficulties, especially the suspension of air travel from Syria to Armenia. Out of those Syrians who did reach Armenia, only about 7% applied for asylum. There was a significant backlog of applications in 2013, which meant that the number of those who were granted refugee status superseded those who applied that year (since applications from 2012 were also considered).¹⁰⁴ One of the explanations for the reason that Armenia did not receive more refugees was the incapability to provide significant legal, social and material assistance. Because of these challenges many refugees did not go through the asylum application process relying instead on social support.

3.1.2 Legal acts regulating the Syrian Armenians

The RA government adopted legal measures to address the problems caused by the crisis in Syria. Unfortunately, not all the measures were applicable. For instance, according to Article 3 of the Law "On Refugees and Asylum", in the event of a crisis, foreign internally displaced people who arrive as mass inflow refugees may be granted temporary protection without following individual procedures. But what is noteworthy, Article 3 was not useful in the case of Syrians, because temporary protection may be granted only to those groups who have left territories directly bordering the Republic of Armenia (i.e. Georgia, Turkey, Iran, Azerbaijan). The reason is that Syrian Armenians did not reach Armenia through those states, but they mostly arrived by airplanes from Aleppo and Dubai (when the air connection still operated). Therefore, the Armenian authorities mostly used the individual asylum procedure, which caused the strain

¹⁰⁴ http://www.indexmundi.com/armenia/net_migration_rate.html

on government resources. Nevertheless, Armenia managed to maintain its obligation and grant refugees the necessary protection. In particular, Armenia has been mindful of respecting the principle of *non-refoulement*¹⁰⁵ based on Articles 33 and 32 of the Geneva Convention on the Status of Refugees.

At the beginning of 2012 110 Syrian families were recognised as refugees and were provided with shelter. According to the Government Decree of 26 July 2012, Syrian citizens were able to receive Armenian citizenship at diplomatic representations or consular posts of the Republic of Armenia.¹⁰⁶ On 24 October 2012, the government adopted “On making amendments in the Law of the Republic of Armenia ‘On State Duty’”, which exempted foreign citizens of Armenian origin who are fleeing from countries that threaten their lives from having to apply for visas and residence permits. Another legal act that served as a practical tool for helping Syrian refugees to integrate in Armenia was their ability to receive permission to drive. Syrian citizens could replace their existing driving licenses without passing any road test and obtain Armenian driving licenses valid for one year (provided that they pass a road test within this time frame). In addition, Syrian Armenians, who entered the territory of the Republic of Armenia using their own private vehicles, have been given the opportunity to prolong the validity period of their vehicles for up to 11 months without paying any customs fee.¹⁰⁷

3.1.3 Remaining Challenges

Due to economic problems in Armenia, many Syrian refugees are unemployed and have limited opportunities to find a job. Those who are employed receive low wages, especially compared with their salaries in Syria before the war. Another big challenge is housing: the majority rent flats, share with people or live temporarily with their friends and relatives. Some Syrian Armenians have property in their home country, but because of the current instability they

¹⁰⁵ Non-refoulement is a principle of international law which forbids the rendering of a true victim of persecution to his or her persecutor. It concerns the protection of refugees from being returned or expelled to places where their lives or freedoms could be threatened.

¹⁰⁶ The Decree is N 950-N and N-951-N on approving the list of the states, citizens of which may be issued a passport of the RA.

¹⁰⁷ The Decree of the Government of the Republic of Armenia N 1106- Armenia N 1106-N of 23 August, 2012 and N334-N of 4 April, 2012.

cannot sell it and purchase housing in Armenia. On a long-term basis some refugees will have to survive like this.

The State Migration Service cooperates with many European asylum authorities from Romania, Sweden, Czech Republic, etc. In late 2013, the State Migration Service made some amendments concerning protection of refugees to the Law on Refugees and Asylum Seekers, with the help of their Romanian counterparts. Nevertheless, the absence of free legal aid for asylum-seekers remains an issue of concern. Meanwhile, the influx of Syrian refugees increased. Out of 327 persons seeking asylum between January and December 2013, 285 were from Syria. The overall number of persons coming to Armenia from Syria since the beginning of the conflict is estimated at more than 11000, with most of them applying for Armenian citizenship or a residence permit rather than for asylum.¹⁰⁸ According to interviews conducted with Syrian Armenians, most of them state that when applying for asylum, they will not have a right to have a business, to work and in case the war in Syria ends, the RA can demand they go back to Syria. But as the RA Constitution allows dual citizenship, it is more efficient to apply for long-time residence or second citizenship.

During the 65th session of the Executive Committee of the High Commissioners' Programme which was held from 30 September to 3 October 2014 in Geneva, the Head of the State Migration Service of Armenia Mr. Yeganyan stated: "Last year with combined efforts of the UNHCR and Romanian asylum authorities we developed and implemented 6 Standard Operating Procedures in processing of asylum applications and 7 other functions in this area will be standardized this year."¹⁰⁹

Before moving on to the problems with data management, it is important to refer to some serious steps Armenia has undertaken to address this challenge. In 2011 the government approved the "Action Plan for Implementation of Policy Concept for the State Regulation of Migration in the RA" which is fully compliant with European norms in the way data is collected

¹⁰⁸ JOINT STAFF WORKING DOCUMENT Implementation of the European Neighbourhood Policy in Armenia Progress in 2013 at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014SC0069>

¹⁰⁹ www.smsmta.am/upload/2014Sep30Geneva.pdf

by state agencies. It was followed by further decrees, one of which was adopted in March 2013 to work on the Action Plan and systematize statistic indicators with the EU.

3.2 The European Neighbourhood Policy: what is it?

In 2003 EU started working on European Neighbourhood Policy for strengthening ties of EU migration policy with non-EU member states providing stability and security of all. Judicial and political EU migration framework policy was established due to the Stockholm programme and actions programme of 2010-2014 . Particularly, it underlines EU Justice and Home Affairs and relations with EaP countries. This foreign cooperation is focused on migration and asylum seeking issues with the aim of widening EU dialogue and collaboration with EaP countries. The ENP has put the stress on board surveillance, combat of illegal migration as well as more productive management of migration flows. For addressing these issues there are two instruments: Mobility Partnership and Thematic Programme for cooperation with third countries in the area of migration and asylum. For ensuring effective collaboration and regional security there have been established two programmes: EU Regional Protection Programme and the Joint EU Resettlement Programme.

The European Neighbourhood Policy (ENP) was adopted by the Thessaloniki European Council in June 2003. Primarily it was designed to improve socio-economic and political development taking into consideration the basic reasons of political instability, conflicts, social exclusion. Its framework is addressed to 16 EU close neighbours: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine. Central to the ENP are the bilateral Action Plans or Association Agendas between the EU and each ENP partner. These set out an agenda of political and economic reforms with short and medium-term priorities of 3 to 5 years. ENP Action Plans/Association Agendas reflect each partner's needs and capacities, as well as their and the EU's interests.¹¹⁰

The relationship between the EU and the neighbouring countries is based on commitments to common values such as democracy, the rule of law, human rights, and the principles of free trade. For this reason EU migration policy was integrated into the ENP from

¹¹⁰ http://eeas.europa.eu/enp/how-it-works/index_en.htm

the very beginning. First, the EU neighbouring countries are the main countries of legal and illegal migration and second, they serve as a significant source of labour force. The first objectives to be carried out in cooperation with the ENP partner countries were defined around three security areas: 1) border management; 2) fight against illegal migration and 3) combating trafficking and smuggling in human being. In 2003 during its communication on “Wider Europe – Neighbourhood”, the European Commission proposed to include the priorities on flexible labour migration and free movement of people across the borders, however, only little has been done so far in these areas.¹¹¹

3.2.1 The Impact of ENP on Migration Policy Framework in Armenia

Since 1996, the relations between the European Union and the Republic of Armenia have been gradually intensifying, moving from the *Partnership and Cooperation Agreement* (PCA).¹¹² Armenian currently is governed by the EU-Armenia PCA, which was signed and entered into force in 1999 and which provides a legal basis for cooperation in the areas of political dialogue, trade, economy, law making, culture, prevention of illegal activities and control of illegal immigration, financial cooperation in the field of technical assistance, trade in goods, provisions affecting business and investment, cross-border supply of services and legislative cooperation.

¹¹³

In the field of Justice, Freedom and Security of the ENP Action Plan there are more than 20 issues related to migration: starting from the border management, readmission and asylum issues and ending with the combating of illegal migration and trafficking in human beings. Until 2000 there wasn't any comprehensive document defining the state regulation policy in migration field. The state regulation policy, implemented by the Republic of Armenia (RA) in the area of migration, was mainly directed at solving the problems of large refugee masses coming from

¹¹¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2003-0378+0+DOC+XML+V0//EN>

¹¹² *Partnership and Cooperation Agreement* (PCA) is to strengthen their democracies and develop their economies through cooperation in a wide range of areas and through political dialogue.

¹¹³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21999A0909%2801%29:EN:HTML>

Azerbaijan, Nagorno-Karabagh and other former USSR countries. Thus, the policy of state regulation of this area during 1988-1999 was mainly based on day-to-day management.¹¹⁴

In 2000 it was the first time the government of Armenia adopted a complete document on the state regulation policy of migration by approving the Concept of State Regulation of Migration in the Republic of Armenia. To date, the Armenian government has adopted a number of strategic documents, which are also linked to the area of migration regulation (the Strategy of National Security, the Sustainable Development Programme, the Concept for the Development of Cooperation between Armenia and the Diaspora, the Strategy on Demographic Policy of Armenia, etc.).¹¹⁵

Travel Documents. A foreigner can enter the RA through the state border crossing points holding 1) a valid passport, 2) an entry visa or 3) a residency document when there is permission by the border control authorized governmental bodies. The travel document ought to be valid for the duration of the intended stay. It is also suggested that the travel document should guarantee the return of the foreigner, which is included in the EU acquis.¹¹⁶

Regarding the passports of Armenian citizens, the 2012 Law on Passport urges to the issuance of new passports with biometrics. Passports are a valid identification document both in and outside Armenia, whereas identity cards are not a valid identification document outside Armenian borders. The new biometric passports that started being issued by Armenia in 2012 are in full compliance with the EU acquis. However, the issuance of new passports is not mandatory and Armenian nationals can continue travelling with their old passports, which do not fulfil the EU security requirements. National identity cards became compulsory in January 2014.¹¹⁷

Unfortunately, the Border Management Information System (BMIS) collects information on entry and exit to/from the country, but does not yet collect information on the purpose and the intended duration of stay in Armenia. One of the aims in the future is to collect the information

¹¹⁴ The “Concept for the Policy of State Regulation of Migration in The Republic of Armenia” was adopted as Appendix to the RA Government Session Record Decision #51 dated December 30, 2010, P.3.

¹¹⁵ Chobanyan, H. “The Reintegration Issues of Migrants Returning to Armenia”, P. 7, 2010.

¹¹⁶ The acquis is the body of common rights and obligations that is binding on all the EU member states.

¹¹⁷ Chobanyan, H. “The Reintegration Issues of Migrants Returning to Armenia”, P.10.

about duration of stay on the entry.¹¹⁸ Stay and residence permit registers represent the most useful source of information on migration into Armenia, but, unfortunately, the lack of data remains misleading.

Border Management. The Border Security and State Border Integrated Border Management Strategy were officially adopted in 2010. In September 2014 the construction work for three regions were started on the border between Armenia and Georgia - Bagratashen, Bavra and Gogavan. The EU continued to support financially this major integrated border management project. An Action Plan was developed in 2011 for the national integrated border management which will continue till the end of 2015. The strategy involves more than 70 activities which cover various areas: legislation, inter-agency cooperation, training and provision of equipment for border crossing points.

Migrants' Rights and Non-Discrimination. Armenia has ratified many international and regional conventions, also it signed the ICRMW on 26 September 2013, but has not yet ratified. As it is well-known, in Armenian legislation ratified international treaties automatically are a part of domestic legislation and they prevail in case of discrepancies with national law. The Constitution also includes provisions guaranteeing the fundamental human rights and freedoms. In the RA Constitution definition of “discrimination” is differentiated between direct and indirect one, as the EU acquis does. During the four monitoring cycle of ECRI¹¹⁹ it was stated that Armenian authorities must ensure that no refugee would live in old, non-renovated buildings in Nor-Nork centre and no migrant should be segregated. It is recommended that the Constitution must have provisions prohibiting public incitement to violence or hatred on the ground of race, skin colour, religion, national or ethnic origin. In order that the Armenian legislation complies with the EU acquis, the RA should effectively apply the principle of equal and fair treatment. Armenia should adopt comprehensive legislation with regards to equal treatment and non-discrimination,

¹¹⁸ Manke, M., Enhancing Migration Data Collection, Processing and Sharing in the Republic of Armenia. Needs Assessment in the Republic of Armenia, IOM, 2011, p. 35.

¹¹⁹ European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, discrimination on grounds of ethnic origin, citizenship, colour, religion and language, as well as xenophobia, anti-Semitism and intolerance.

including necessary measures to protect individuals from any adverse treatment which is against the principle of equal treatment.

As long as human rights of foreigners are not included in one single act, it is recommended to collect relevant provisions in a separate legislative act on the protection of migrants' rights which may contribute to the understanding that migrants and not only refugees should be perceived by the Armenian legislation as a vulnerable group of people, in need of special human rights protection.

Integration. The Republic of Armenia does not currently have integration methods, so adoption of policies in this area is necessary. For developing targeted policy the needs and interests of migrants' must be taken into consideration. Employment market situation, education, housing, language knowledge, availability of information, etc. must be involved in the assessment. The Human Rights Defender of the RA and the State Migration Service should ensure that foreigners will receive all information required on the work of human rights' protection in Armenia and that they will be able to make use of this important institution in cases of violation of their human rights by public authorities.

Based on Chapter II on integration of migrants in Europe we can assume that for successful integration language courses must be provided to all migrants. Moreover, authorities should provide them with transparent and easily accessible information on conditions of registration procedure and access to the employment as well as on labour rights, access to social security, anti-discrimination, etc. For combating xenophobia and preventing the emergence of negative attitudes, discrimination of foreign people, Armenian nationals should be familiar with realities and benefits of immigration for Armenia as well as with Armenia's international humanitarian obligation. Also, it is recommended to pay particular attention to the situation of refugees, victims of trafficking and other vulnerable groups.

Asylum. Compared to the EU acquis, several gaps have been identified in the asylum legislation. The lack of a subsidiary protection status for persons who are not qualified as refugees in accordance with the Convention Relating to the Status of Refugees but who cannot be removed from Armenia; shortcomings in the asylum determination procedure, limited rights and

integration and support measures granted to refugees and persons who cannot be removed due to the principle of *non-refoulement* appear to be, however, of major concern. Moreover, although the legislation envisages temporary protection procedures in case of mass influx of asylum seekers, also due to its limited scope, it does not seem to be guaranteed that Armenia can in practice provide protection to all persons in need. Hence, recommendations are to establish subsidiary protection status; to use the definition and the terminology of the Qualifications Directive when defining asylum seekers, refugees and persons with subsidiary protection status.¹²⁰

3.2.2 Visa Facilitation and Readmission Agreements

The lifting of EU visa requirements for the citizens of partner countries travelling to the EU is one of the Eastern Partnership's long-term key objectives.

The Visa Facilitation Agreement and Readmission Agreement with Armenia entered into force on 1 January 2012. One of the potential benefits of Armenia-EU Mobility Partnership is regulated labour opportunities in the participating countries, which will offer the Armenian migrant new skills and work experience, increased incomes, equal treatment and rights, the possibility of transfer of pension rights, which will offer Armenia as a country more foreign investment and trade links, transfer of remittances, know-how and innovations and the promotion of brain circulation (via circular migration schemes and increasing the role of the Diaspora communities in the development of their home country).¹²¹ Circular migration or repeat migration is defined as the temporary and usually repetitive movement of a migrant worker between home and host areas, typically for the purpose of employment.¹²²

Significant interest by Armenia was seen in the Panel on migration and asylum in 2014, the work of which was devoted to labour migration and migrants' access to rights, detention, asylum and trafficking in human beings. An expert meeting on detention was held in Chişinău in

¹²⁰ Chobanyan, H. "The Reintegration Issues of Migrants Returning to Armenia", P. 17, 2010.

¹²¹ www.eeas.europa.eu/delegations/armenia/press.../2014_10_31_1_en.htm

¹²² Fargues, Philippe "Circular Migration: Is it relevant for the South and East of the Mediterranean?" 2008.

March. EaP countries were keen to continue engaging with the panel. In 2015 for the first time there will be an expert meeting in Minsk.¹²³

External and internal factors often influence each other in many countries during the strategic planning of migration policies. Although security-driven parameters in most of the cases prevail, current migration strategies still need to reflect a whole range of migration issues that are relevant for the respective country. Therefore, migration strategies represent frequently political attempts to regulate the complex migration phenomena in the given national context. According to the Armenian Concept for State Regulation of Migration, the experience of recent years has demonstrated that the Armenian state system of migration regulation has been unable to effectively solve the migration problems faced by the country.¹²⁴

Since 2008 the government of Armenia has expressed its interest in cooperating with the European Union (EU) in managing labour migration issues. Establishing circular labour migration schemes with the EU has been raised and discussed by Armenian migration policy makers. Various policy dissemination workshops have been organized, among these the workshop in the framework of TAIEX¹²⁵ where some of EU labour migration management practices were discussed, such as legal work opportunities in the EU countries (European Pact on Immigration and Asylum – Blue Card and Circular Migration), the EU practice on bilateral agreements with countries of origin; and cooperation in circular migration schemes (the case of Portugal), etc.¹²⁶

According to Armenian policy, one of the main tools for combating illegal migration is legal labour migration, and circular migration schemes are one option here.¹²⁷ And in the case of the EU the legal preconditions of circular migration were part of a Joint Declaration on a Mobility Partnership (MP) signed between Armenia and the EU in October 2011. Among other

¹²³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2015:76:FIN>

¹²⁴ Chobanyan, H. “On Migration Policy Framework in the Republic Armenia”, P. 9, 2012.

¹²⁵ TAIEX (Technical Assistance and Information Exchange instrument) is an integral feature of the European Union enlargement strategy.

¹²⁶ TAIEX Workshop on EU experience in labour migration management, accessed 15 August, 2012. <http://www.backtoarmenia.com/?page=news&nid=135>

¹²⁷ “Concept for studying and prevention of irregular migration launching from the Republic of Armenia”, approved by the Armenian Government protocol decision № 51 from 29 December 2011. Available at: <http://smsmta.am/?id=1012>

goals, the Mobility Partnership has the purpose of better managing legal and labour migration, including circular and temporary migration, to promote a better framework for legal and labour mobility, including the facilitation of temporary and circular migration, supported by more information and concrete and effective initiatives as well as the protection of migrants.¹²⁸

During recent years, several significant strategic documents were adopted by the RA government in the area of state regulation of migration processes: the RA National Security Strategy, the Sustainable Development Programme, the Concept for the Development of Cooperation between Armenia and the Diaspora, the RA Demographic Policy Strategy, etc.). These strategies mainly deal with issues concerning protection of refugees, regulation of data management and demographic changes, and also strengthening ties between locals and diaspora via such projects as “Come Home”.

It is evident that Armenia has become more active in the migration policy and its adopted documents addressing unmanaged and illegal migration, primarily, the drain of educational, scientific and cultural potential as a threat to the country’s national security and pay sufficient attention to the causal links between migration processes and various problems of the country’s public life.

Under the influence of globalization and international integration processes together with economic crisis and geopolitical situation, new challenges have appeared for Armenia’s migration management and regulation. The urgency for new imperatives was afterwards emphasized by the global financial and economic crisis, because of which the negative influence of migration processes revealed even more strongly whereas the positive ones were undermined. The Armenian authorities have further focused on and declared European integration as the core political priority for the future development of the Republic of Armenia, which was proved by the launch of the European Neighbourhood Policy (ENP). The ENP has recently reached a qualitatively new level and been upgraded to the Eastern Partnership Programme. Consequently, within this new framework, the RA has taken the responsibility to legislatively and institutionally approximate its migration administration system to that of the EU. Moreover, the investigation of

¹²⁸ Joint Declaration on a Mobility Partnership between Armenia and the EU, p. 4.

the Armenian migration policy framework regarding its compliance with EU standards and the implementation of the corresponding action programs is envisaged.¹²⁹

Implementation of the EU-Armenia Mobility Partnership and the 2012-2016 National Action Plan on Migration continued. The EU provided support for migration management and reintegration through Twinning and other projects. The EU Twinning project “Support the State Migration Service for the Strengthening of Migration Management in Armenia” launched in August 2012. The project is financed by the European Union with a budget of € 1 million and its duration is 27 months. The aim of the project is to bring Armenia closer to EU legislation and best practices in migration and asylum issues management.¹³⁰

The EU-Armenia Readmission Agreement was signed in April and was ratified by the Armenian National Assembly in November 2014, together with the already signed Visa Facilitation Agreement. Both agreements entered into force on 1 January 2014. Mobility Partnerships provide a framework for policy dialogue and operational cooperation between the EU, its Member States and the partner countries. Cooperation in the context of the EU-Armenia Mobility Partnership also advanced, with the smooth implementation of a targeted initiative project entitled ‘Strengthening Armenia’s migration management capacities, with special focus on reintegration activities’.¹³¹

According to the analysis of a local Armenian report Simonyan, taking into account the deficits of the previous policy experience, concluded that the RA’s government has switched from a passive and reactive to a pro-active migration policy. In order to ensure the efficiency of the new system, a new approach of state regulation of migration policy framework as well as the improvement of the legislative, institutional and administrative mechanisms need to be developed.¹³²

According to the analysis of German Corporation for International Cooperation, there are several serious problems in strategy papers adopted in various RA public administration sectors

¹²⁹ www.giz.de/expertise/.../giz2012-en-analysis-migration-strategies

¹³⁰ <http://twinning-migration.wix.com/smsarm#!events/c8hd>

¹³¹ <http://eapmigrationpanel.org/page33576.html>

¹³² www.giz.de/expertise/.../giz2012-en-analysis-migration-strategies

(above mentioned: the RA National Security Strategy (NSS), the RA Demographic Policy Strategy (DPS) , The Sustainable Development Programme) which are divided into two main groups. The first group reveals challenges causally linked to migration processes, which must be solved with the help of policy strategies of the respective field ministries - Ministry of Territorial Administration, Ministry of Education and Science, Ministry of Health, Ministry of Economy. The challenges are generally described below and refer to the Action Plans of ministries from corresponding fields, but they do not set out concrete political priorities aimed at the solution of the problems of this group and yet, there are no specific relevant administrative mechanisms or entities responsible for their implementation. The second group describes problems that must be solved merely with the help of the state regulation instruments in the field of migration, incorporating bilateral agreements. These problems occur particularly in the administrative governance system of migration procedure. They involve policy priorities towards the protection of migrants' rights and how well the migration regulation policy complies with the EU standards.

So, according to the research of the German Corporation for International Cooperation, two groups of problems are presented below.

1st group:

- “1. Improvement of the unfavourable demographic situation caused by emigration processes.
2. Improvement of the undermined resettlement situation of the state's population resulting from migration processes.
3. Prevention of undesirable emigration flows reaching considerable dimensions due to the deceleration of the socio-economic development of bordering rural areas, the deterioration of the demographic situation and the desertion of bordering villages.
4. Reduction of the large-scale outflow of the intellectual and scientific potential, as well as quality labour force of the Republic.
5. Implementation of economic policy, including tax, monetary transfers and customs.
6. Prevention of the break-up of family and marital relations.

2nd group:

1. Approximation of the RA legislative framework of migration regulation and the administrative system with the corresponding EU legislation.
2. Introduction of the system of biometric e-passports and identity cards with a view to raising the protection of the documents certifying a person's identity and nationality and the facilitation of the right to movement of the RA nationals.
3. Improvement of the RA border management system by means of introducing the principle of integrated state border management.
4. Development of an information system for registering migration flows.
5. Protection of the rights and interests of RA nationals leaving for labour migration purposes.
6. Regulation of the employment conditions of foreign nationals in the RA with a view to ensuring the priority right of RA nationals to employment compared with foreign nationals in the territory of the RA.
7. Prevention of irregular migration originating from the RA, improvement of the legislative framework relating to irregular migration.
8. Assisting the return of RA nationals from foreign countries as well as their reintegration in their home country.
9. Improving the asylum system of the RA. Ensuring effective integration of foreign nations within the RA society once they are granted a refugee status.
10. Ensuring the implementation of the integration policy in the case of refugees forcedly migrated from Azerbaijan in 1988-1992 into the Armenian society.
11. Mainstreaming of the internal migration processes in conformity with the requirements of the national security and the sustainable development of the Republic of Armenia.
12. Regulation of the potential mass movements of the population at times of emergencies.

13. Organisation of the fight against human exploitation/trafficking and protection of the victims of human exploitation/trafficking.

14. The monitoring and evaluation of the progress of the implemented migration policy and the introduction of a system for its day-to-day review and adjustment on the basis of the analysis and evaluation of the migration situation of the Republic of Armenia.”¹³³

The State Migration Service of Armenia has submitted a draft of the Action Plan 2012-2016 to the relevant ministries for their review and comments for the implementation of the “Concept for the Policy State Regulation of Migration in the Republic of Armenia”. The Plan itself was presented to the government of Armenia at the end of 2011. In the context of the migration management reforms that Armenia is currently implementing, the establishment of a State Migration Service (SMS) has to be evaluated as a step forward in terms of policy coherence. Before the reforms there was no single state body coordinating migration management in the Republic of Armenia. Therefore, there was a necessity for an authorized body developing and coordinating migration policies among the various state bodies presently dealing with different migration issues.¹³⁴

As Armenia step by step becomes a new host country for immigrants, the MIPEX assessment states that the legal migration framework of the RA is halfway favourable for integration. Overall, it scores 44 out of 100 points and ranks alongside other ‘new’ immigration countries in the MIPEX (e.g. Southeastern European countries, such as Bulgaria, Greece, Romania, and Serbia). Immigrants to Armenia can benefit from several favourable policies: inclusive requirements for reunited families and permanent residence, local voting rights for foreigners, and the acceptance of dual nationality. Several of Armenia’s policy weaknesses are also shared with other ‘new’ destination countries in Europe. Immigrants to Armenia face highly discretionary procedures for family reunion, permanent residence and access to nationality and lack of targeted state support to find the right job, improve the education of their children, and organize themselves to be heard in political debates. Furthermore, Armenia’s policies fall below

¹³³ www.giz.de/expertise/.../giz2012-en-analysis-migration-strategies

¹³⁴ The report of European Advisory Group to Armenia
www.euadvisorygroup.eu/.../EUAG%20Annual%20Report%202012.pdf

international, EU and other European legal standards and national practices on family reunion and permanent residence procedures, the absence of immigrant consultative bodies, and, most notably, the absence of a dedicated anti-discrimination law and independent equality agency.¹³⁵

3.2.3 Implementation of the European Neighbourhood Policy in Armenia.

Progress in 2014 and recommendations for actions

As was already mentioned, implementation of the EU-Armenia visa facilitation and readmission agreements began in September 2014. Activities under the EU-Armenia Mobility Partnership and the 2012–16 national action plan continued. In March 2014, a referral center for reintegrating returning migrants was set up with EU support and an online information site for returning migrants was launched. In July 2014, Armenia confirmed the implementation of the 2014–16 Action Plan on making migration legislation correspondent with EU standards (including ‘approaches and principles adopted in the European Union and the Common Economic Space’). A new body in charge of integration was formed at the State Migration Service to establish a policy for long-term migrants. Amendments to the law on asylum and refugees are pending at the national assembly. Amendments to the Criminal Code came into force in August 2014, approximating the Armenian legislation concerning migration policy more closely into line with Article 31 of the 1951 Refugee Convention, protecting refugees and asylum-seekers from penalization for illegal border crossing. Amendments to the citizenship law, introducing provisions to combat and reduce statelessness, were submitted to the national assembly for discussion in autumn. With EU support, the asylum authorities carried out a number of quality assurance activities and continued to train, coach and mentor asylum staff. Up until the end of June 2014, 3177 recognized refugees arrived in Armenia from Azerbaijan, Iraq, Syria, Iran, Lebanon, Georgia and various African countries. Reports have shown that from estimated 16 000 people from Syria, most of which are ethnic Armenians, had arrived in Armenia since the beginning of the Syrian civil war, and about 12 000 have remained in the country. Also a small number of internally displaced people have come from Ukraine and northern Iraq.¹³⁶

¹³⁵ MIPEX Report on Armenia. <http://old.mipex.eu/armenia>

¹³⁶ Report on the implementation of ENP in Armenia in 2014 eeas.europa.eu/enp/pdf/2015/armenia-enp-report-2015_en.pdf

For the next five years, it is expected that the system of providing protection to migrants, refugees and stateless people on the humanitarian bases will be advanced as a result of the implementation of the Action Plan 2012-2016 of the Policy Concept for the State Regulation of Migration in the RA. Moreover, the Action Plan will also help to present electronic passports with biometric information and IDs for to raising the level of protection of documents for identification of a person and to facilitate the mobility of the RA citizens.

Conclusion

Migrants all over the world play an important role in the development of host countries, and the remittances from them have a big impact on economic accounts of their home developing states. Socio-economic rights are of a great importance as merely social and economic conditions (housing, healthcare, social security, education, etc.) reflect the quality of a human life. Rights are thought to be universal, but in reality a right can be illusory if a person cannot use it and be protected. Hence, international conventions are considered to be strong tools for ensuring fundamental rights, but in practice, unfortunately, nothing is ideal. As the rights of migrants are not well protected, some states treat migrants as vulnerable groups. Unfortunately, not only unauthorized migrants earn little money, but also regular migrants of both short and long residence. It happens as a result of discrimination or because of their status, and the fact is that their rights are often violated. The obligation of host countries is to protect their rights, to assure them a decent life and working conditions.

The novelty of this paper is that we tried to present impartial results, based on different quantitative and qualitative sources and self-conducted interviews, taking into consideration viewpoints from both sides – the EU Member States and immigrants. The difference of the EU legislation concerning rights of migrants and the ICRMW was thoroughly analyzed. The latest issues concerning refugees crossing the Mediterranean were also addressed in the paper.

The first chapter of the paper discussed EU Migration Policy, how it developed and what challenges remain for better protection of migrants' rights. In connection with this, the role of ICRMW is very essential, though none of the EU Member States have ratified it yet. The ICRMW is the first human rights convention and instrument that was adopted universally and that protects all migrants and their families irrespective of their status. Having analyzed the reasons for non-ratification, it was said that there were legal, financial and administrative obstacles, but they are only excuses and practically there are no such serious barriers. The study revealed that the decision has been made primarily by political choice. The ICRMW is the only international human rights treaty which clearly distinguishes between rights of regular and irregular migrants. Most of the rights in the convention are enshrined in EU legislation and other core international conventions as ICCPR and ICESCR, but anyway, there are some rights which are not included there, precisely: the right not to lose residence or work permit for not fulfilling a

contractual obligation, the right to transfer savings and earnings, the right to consular protection and assistance, and the right not to have identification documents confiscated or destroyed and the right to information. One of the most listed reasons claimed by the EU is that the ICRMW would breach the sovereign right of States to decide upon entry in and stay of third-country nationals on their territory. Nevertheless, the ICRMW does not limit the freedom of States to decide on visa, residence and work permit criteria. It even has several articles which grant the State the freedom to decide to return irregular migrants on the individual basis, or the right of States to decide on regularizations, etc. Vividly the negative or neutral position of the EU Member States towards the ICRMW resembles a double-standard game: while they demand that other States respect their international human rights obligations, they refuse to be bound by international human rights obligations regarding migrant workers.

The second chapter was devoted to EU Integration Policy in accordance with practice of anti-discrimination. We stated that the goal of host countries should be providing means for their integration, being it language courses, housing, health care and what is very important, including non-discrimination towards immigrants, especially demonstrated in the labour-market. Integration cannot happen if there is such an obstacle as discrimination and unfair treatment: low-skilled positions, low salaries, social exclusion. Although anti-Muslim attitudes in society have existed in Europe for a long time, a clear shift from xenophobia to anti-Islamic attitudes has emerged since the beginning of the 21st century, which is mainly due to the developments in world politics and the debates on terrorism, security, and Islamism. Reports from CERD, ECRI and recent events like Charlie Hebdo or Jyllandposten are evidence of this. The CERD highlighted the narrow definition of racism and racial discrimination in the German law and called on France to combat hate speech in newspapers and in the Internet. It was also pointed out that migration indices are higher in the UK and Italy in comparison with other countries. Recently Italy has become the most welcoming state and country, number one for refugee flows crossing the Mediterranean, which accepted approximately 180,000 refugees in 2014.

It has been concluded that the discrimination that immigrants face and the loss of lives of refugees are the evidence that the EU's migration policy and the work of international organizations are not productive and serious steps for better protection of human rights must be taken.

The final part discussed immigration to Armenia, what impact the Syrian crisis has had on the country and the role of the ENP in shaping migration policy framework of the Republic of Armenia was assessed. The regulation of migration policy should be in harmony with the RA national interests as well as in accordance with Armenia's international obligations, including first of all the ENP recommendations. With EU support, the asylum authorities carried out a number of quality assurance activities and continued to train, coach and mentor asylum staff. Consequently, within this new framework the RA has taken the responsibility to legislatively and institutionally approximate its migration administration system to that of the EU.

Certainly, for a long time it has been considered that Armenia is more a migrant-sending country. In this context the EU-Armenia cooperation was also productive. Regarding the passports of Armenian citizens, new passports with biometrics started being issued by Armenia in 2012 and are in full compliance with the EU acquis. The EU-Armenia Readmission Agreement was signed and ratified by the Armenian National Assembly in November 2014, together with the already signed Visa Facilitation Agreement. Both agreements entered into force on 1 January 2014. Moreover, starting from 23 June 2015, applicants for Schengen visas will have to provide their biometric data (fingerprints, photo) which will be recorded in the Visa Information System, thus passing to all EU Embassies in Armenia automatically. It will protect visa applicants against identity theft and false identifications. Considering that human rights of foreigners are not included in one singular act, it is recommended to collect relevant provisions in a separate legislative act on the protection of migrants' rights which may contribute to the understanding that migrants and not only refugees should be perceived by the Armenian legislation as a vulnerable group of people, in need of special human rights protection.

It is clear that much more remains to be done, but the states should learn from one others' experience and not avoid addressing rights of all migrants, irrespective of their status. They should work on better migration management, trying to integrate them and eliminate discrimination, otherwise, migration and integration policies will fail. Sometimes we can hear from the society: "He is an illegal immigrant", but it does not mean that illegal or irregular migrants do not have rights. Rights of all should be protected, because there are no illegal human beings in the world.

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Appendix 1

In May – June 2015 different interviews were carried out with immigrants in Europe and Syrian Armenian immigrants in Armenia. They were asked about the discrimination they have faced and problems of integration. The information about interviewees is presented here.

Name	Sex	Age, Status	Country of Origin	Country of residence
Farhan Ahmad	M	24, student	Pakistan	Germany
Mohammed Ala	M	23, student	Egypt	Germany
Akmal Khan	M	32, student-employee	Pakistan	Germany
Salman Ahmad	M	27, student-employee	Pakistan	The United Kingdom
Babur Yusufi	M	32, Professor	Pakistan	The United Kingdom
Rami James	M	29, employee	Lebanon	The United Kingdom
Dharanidharam Selvam	M	28, student-employee	India	Austria
Solanj Hlal	F	24, student-employee	Syria	Armenia
Shoghig Kheoshkerian	F	30, student-employee	Syria	Armenia
Silva Vartanian	F	45, house-wife	Syria	Armenia