

MEPDEV 2nd: 2016
Central & Eastern European LUMEN International
Conference - Multidimensional Education & Professional
Development. Ethical Values

EU MIGRATION POLICY AND ETHICAL VALUES. SHORT
CRITICAL CONSIDERATIONS

Constanța Mătușescu (a)*

*Corresponding author

(a) Associate Professor Ph.D, Faculty of Law and Administrative Sciences, "Valahia" University of Târgoviste,
Romania, constanta_matusescu@yahoo.com

Abstract

The European Union has been based on a number of values that are the common identity of their members: respect for human dignity, freedom, democracy, equality, solidarity, rule of law. These values give an ethical dimension to the European project.

A series of decisions adopted at European level in recent years, in context of immigration crisis, and individual decisions of some Member States, however, call into question those values. Given that fundamental texts for European construction, such as those governing the Schengen area or regulations in the field of asylum, seem not to exist, the question arises to what extent the European Union can be considered the bearer of values which it proclaims.

The study aims to highlight the main controversial aspects of the European migration policy from the perspective of ethical considerations, by reference to the values on which the European Union is founded, identifying the prospects as these aspects should be improved as a result of the recent actions taken at the European Union level and the proposals for reform in the course of implementation.

© 2017 Published by Future Academy www.FutureAcademy.org.UK

Keywords: European Union, refugee crisis, migration policy, asylum, ethical values.

1. Introduction

The European Union is often invoked as a model of transnational democratic construction in which the member states, learning from their experience of old bloody conflicts, abolished the frontiers between them and established a collaboration based on a series of common "values", such as respect for



human dignity, democracy, the rule of law and human rights. The Union's motto, "unity in diversity", reflects a commitment of transnational solidarity, combined with respect for the national differences.

If inside the community the goods, services and European citizens move freely, for those coming from outside but (people fleeing war, poverty or instability), the European Union appears rather as a "fortress" (Geddes, 2000; Bendel, 2005) protected by solid legal barriers.

Conscious that with the deepening of the freedom of movement within the European area (in particular, within the Schengen area) to create an area without borders for people from all over the world and that counterbalancing the consequences for this response is required at the European level, the Member States have developed a common European approach to asylum and immigration. Originally developed in an intergovernmental framework fully within the framework of the Schengen Convention since 1985, entered into the third pillar of the Maastricht Treaty in 1992, the European policy on asylum and immigration was progressively linked to the European Union law since the Treaty of Amsterdam, currently (according to the Treaty of Lisbon) area of shared competence between the Union and the member states (art. 4 TFEU) keeping the ordinary legislative procedure (art. 77-81 TFEU). This emphasis on securing the external borders, combating clandestine migration, fostering a movement that laid down by law sufficient to meet the needs of the labour force (in particular for certain qualified jobs) and the establishment of a common European asylum system.

In spite of the adoption at the European level of a large number of legal texts addressing to the harmonization of rules in relation to the immigration and asylum, the European policy remains under construction, migratory, being still subject to a certain margin of interpretation from the member states wishing to maintain the sovereign control and decide who can enter and reside in their territory. The European structural weaknesses, relating principally to the decision-making process, made it impossible to reconcile the views of those 28 countries and the development of a genuine common policy responding to a realistic manner for the needs of protection of people who are trying to take refuge in the European territory.

2. Problem Statement

The context of the past few years, marked, on the one hand, an unprecedented increase in the arrival of people fleeing war, instability and poverty in the European territory, and on the other hand, a certain strain at the European level and a fragility of social, economic and political, made all the more difficult consensus among the Member States on a common migration policy. Much of the European instruments of harmonization of rules in the field of asylum and immigration proved functional in the new context, each State having to deal with the challenges of the influx of migrants and refugees in a way. Under the pressure of national opinion increasingly dominated by nationalist feelings and ethnocentric, who see immigration as a threat to their own companies and welfare, the control of migration flows and the fight against the clandestine immigration were considered major priorities, while the principle of the protection of refugees appears rather marginal. From fear of losing ground in the face of nationalist movements and xenophobe, much of the national political leaders yielded to the pressures of these movements, accepting by default as the political agenda and the values to be fixed by them.

Against this backdrop, although almost every document of the European Union's migration and asylum referred to fair procedures for humanitarian values and solidarity, the size of the migration policy of the European ethics was tempered by the popular anti-immigration realities, pressures and intergovernmental negotiations. While the values are at the basis of the European construction advocates humanism, mutual aid and solidarity, the European Union and its members approach appears rather as one of isolation, in which refugees and migrants are seen as "harmful elements" destabilizing, to be treated as such. As a result, instead of having to make common front around humanitarian purposes, to

cooperate in programs for relocation or common procedures to adopt fair, the European Union members have agreed on measures to restrict migration into the EU aimed at strengthening border control, tightening asylum rules and transfer the responsibility for the protection of the asylum seekers beyond its borders.

The results of this approach is the dilution of the responsibilities between the Member States, increasing the risk of the persons' return to such places where life or freedom is at risk, subjecting applicants for protection of irregular proceedings and the erosion of their rights.

Towards the criticism from the international institutions, the human rights organizations, the academia or the civil society, the European Union has adopted in the past two years a number of documents, starting with the European Agenda concerning migration (European Commission, 2015), and continuing with a series of measures taken to implement it, through which, by identifying the need for new approaches to the problem of migration, which have a more pronounced European character, proposes a series of reforms of the European migration policy through which it becomes more efficient, equitable, and humane.

3. Research Questions

The paper is considering highlighting the main problematic issues of the European migration policy from the perspective of ethical considerations, by reference to the values on which the European Union is founded, identifying the prospects as these aspects should be improved as a result of the recent actions taken at the European Union level and the proposals for reform in the course of implementation.

4. Purpose of the Study

The study proposes an approach which is both legal and ethical from perspectives on issues of migration considerations at the European Union level, contributing to the literature that claims that the two approaches are not mutually exclusive. It tries to suggest that an excessive focus on limiting migration and mechanisms implemented to achieve this target are likely to contradict the values on which the Union is based.

5. Research Methods

The work represents a theoretical research into the essential provisions which are considered international and the European law that regulates the issue of migration, as well as the literature addressing this problematic regarding not only legal terms, but also ethical ones. Based on these problematic issues are identified in terms of the migration policy of the European ethics and it is evaluated the potential of the modifications of this policy to transform it into one more equitable and humane.

6. Findings

6.1. Elements of the European Community Migration Policy' Critics from the Perspective of the Ethical Considerations

a) The Criminalization of the Irregular Migration

One of the central objectives of the European policy on migration is, in accordance with the article 79 of the Treaty on the functioning of the European Union (TFEU), preventing the "illegal immigration". The "illegal migrants" or "clandestine" are those persons entering the EU territory without the necessary authorization or in possession of a visa or residence which exceeds the period provided for by the visa.

Considered a priority in all European strategies relating to migration, the fight against clandestine migration is backed by an arsenal of legal instruments aimed at discouraging irregular migration, expulsion and repatriation of persons in irregular situation is residence and checking at the external borders of the Union.

As a deterrent, measures have been adopted in the directive on sanctions against transporters (Directive 2001/51/EC), which provides for sanctions against those carrying undocumented migrants in the EU and the Directive regarding the facilitation (Directive 2002/90/EC) defines the unauthorized entry, transit and residence and provides sanctions against those who facilitate such violations. The private sector is also involved in controlling migration, the Directive on penalties to employers (the Directive 2009/52/EC) prohibiting the employment of the third-country nationals who do not have the right to reside in the EU.

The border control is based on the existence of the European Agency for the management of the Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and harmonization of legal, technical and border control instruments. Assuming the appeal to the sophisticated technologies (biometrics), they eventually approve the existence of databases for the recording and monitoring of migrants, such as the Schengen Information System (SIS II), Visa Information System (VIS) and the Central European System of Automatic Fingerprint Identification (CESAFI). Also, to balance the financial burdens between the Member States relating to the control of the external borders, bearing in mind that not all of them have external borders that need to control them and are not equally affected by flows of traffic at the border, having been created a number of funds (the Fund for the external borders, replaced for the period 2014-2020 with Homeland Security Fund: Borders and Visas) benefiting from a major financial allocations (almost 2 billion euros for the period 2007-2013, and nearly 4 billion euros for the period 2014-2020).

As regarding the expulsion and repatriation of persons residing illegally in the state of residence, it is based on the return Directive (Directive 2008/115/EC) and the conclusion of readmission agreements or to develop the cooperative projects for the control of migration with the countries of origin and transit. The return directive establishes common rules and procedures applicable in the Member States for their removal from its territory of nationals of third countries which are in a situation of illegal residence. The procedure starts with a return decision, followed by a voluntary return and, if this does not occur, by forced removal measures. In addition, the directive provides for the possibility of a ban on new entries into the EU for a term which may extend to five years.

In terms of ethics, the principle itself of controlling the migration and the fight against irregular migration can be considered problematic, as the proponents of freedom of circulation rate (Pécoud & De Guchteneire, 2009), for it comes in contradiction with art. 13 of the Universal Declaration of Human Rights, which proclaims the right of any person to circulate freely and to choose residence within a State's borders and the right of anyone to leave any country, including his own, and return to his country.

At least in the present context, when the official discourse focuses on the need for strict surveillance at borders, the principle of free movement that seem illusive at the European Union level. Although the EU Charter of Fundamental Rights enshrines the right to free movement, and its collapse can occur for specific grounds (public health, public safety, public order), the member states shall be attached to sovereignty approach, citing a "right of exclusion" (Schotel, 2012) concerning the "normal migrants" (those people who made the decision to emigrate freely, without intervention of an external binding factor) in the European speech, are known as "economic migrants", which allow them to refuse admission to their territory.

At the same time, concerning the refugees (persons fleeing persecution, conflict or war) and seeking asylum in the EU, the problem remains open in principle. The member states are obliged, pursuant to the Geneva Convention of 1951 relating to the status of refugees, to which all are the

contracting parties and to which the EU treaties make reference (art. 78 TFEU; art. 18 of the Charter of Fundamental Rights), to provide protection and to ensure the compliance with the principle of non-refoulement, according to which a person cannot be returned in a country where there is a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatments.

However, various strategies and measures implemented to limit the arrival of migrants and restrictive way in which the member states interpret the legal foundations of the right to asylum had the effect of subjecting persons who are in need of international protection and have serious risks of being deprived of that right. Thus, on the one hand, in the face of the difficulties of obtaining visas for the member states, the majority of people in need of international protection arrive in Europe without having travel documents. Although the international law rules forbid states to make the entry into their territory of asylum seekers on the possession of such documents, many member states ignore this rule and are treating the persons concerned as clandestine migrants/illegal. Beyond the fact that this practice has as a consequence, stigma, dehumanization of refugees by condemning them to a condition of illegality, which negates the minimum social rights (to medical care or education), the living in conditions that are very far removed from the principle of the protection of the dignity of the human being (Council of Europe, 2015), it involves subjecting such persons of various measures of repression against illegal migration in which the fundamental rights are likely also to be violated.

In European idea, the irregular migration is reckoned as a matter of internal security, representing a threat to public and social order, being associated with criminogenic attributes. The highlight of this criminality is the detention of migrants, although aimed at people who have not committed any “crime”, has a criminal meaning and is widely used by Member States. Such a practice is permitted by the directive on the return as a last resort for the expulsion of a person (including minors) against which was taken a measure of return, where it is likely to evade or does not cooperate, the duration of the detention can reach up to 18 months.

According to the Court of Justice of the European Union, the directive does not preclude to any national rule which describe the illegal stay of a third-country national law offence and provides for criminal penalties, including imprisonment or that of preventive arrest in order to establish legal or illegal character of the stay (CJEU, 2011).

The Agency for the Fundamental Rights (FRA) has looked into several occasions the member states’ practices in this respect, reaching the conclusion that there are reasonable arguments that they are not fully in conformity with the standards of the Fundamental Rights of the Union. A study given to publicity in 2014 (FRA, 2014) notes that most member states punish by imprisonment and/or fine the irregular migration. This pulls the alarm in the sense that there is a risk that migrants should be placed in detention and in other situations than those permitted under the directive on the return (before they take a decision against their return). There are also highlighted the practices of the states that, contrary to the Directive regarding the facilitation (Directive 2002/90/EC), criminalizes not only the migrants in case of irregular entry or residence, but also those who help them in their capacity as providers of legal or humanitarian assistance or to help those migrants who are in difficulty at sea, these humanitarian gestures often penalized by arrests or prosecutions. Or, the judicial fact that a state encourages the public to reports the illegal migrants to the immigration authorities determined the migrants to seek refuge in undercover, depriving them of access to public services and making them more vulnerable to exploitation and abuse.

b) “Outsourcing” the European Migration Policy

The European Union treats migration and asylum as a global problem and a security issue that requires a response together with foreign partners. This approach, which combines aspects of its internal policy and the external form of readmission agreements and cooperation projects for the migration

control. The result of this approach represents an “outsourcing” of European migration policy, under which the responsibility for the reception of migrants is transferred to third States, and it is entrusted to States which are not part of the Union, a part of its external border security.

The readmission agreements, by which non-member states undertake to readmit their own nationals, no national or of third states on their territory with stateless, were negotiated and concluded by the EU member states or at EU level since the 1990s, initially with the applicant states of the Central and Eastern Europe, and subsequently with partners more removed. They allow the application of accelerated procedure concerning the return of illegal migrants and asylum seekers whose applications have been rejected, but can also point the asylum seekers whose applications have not been analyzed. Agreements have been concluded with the regime in Balkans, Russia, Ukraine, Turkey, Pakistan, Bangladesh, Hong Kong, Macao, Sri Lanka, Georgia, Armenia, Azerbaijan and Cape Verde and opened negotiations with other countries, such as Morocco, Algeria and China. In some cases, negotiated within the framework of trade agreements and cooperation (in the form of “mobility partnerships”), the readmission agreements have both an element of coercion and incentives for those States which accept the readmission, consisting of aid for development or facilities for visas.

A more recent approach to the European Union, which translates its willingness to intervene as far as possible on the European borders to prevent the maximum access of migrants to the territory of the Member States, is the development of the regional protection programs, whereby EU grants technical assistance and financial support to the states of a given region (Eastern Europe, North Africa, The Horn of Africa) to develop their capacity to better manage migration, including strengthening the capacity to protect refugees. Although this Union action is depicted as having an ethical dimension, this dimension can be seriously questioned as long as most of the assistance provided is focused on controlling migration, through investment in the infrastructures of the frontier control of those States. In addition, the developed countries that does not Excel in terms of the protection of human rights, regional protection programs do not ensure an adequate level of protection of refugees from those regions.

On the same level there are the cooperative programs between the EU and the third countries such as Libya, Morocco or Egypt, which involve joint actions of the Union (via Frontex) and of the third states to detect the movements of people and to discourage migrants to embark on journeys to the EU member states.

The European Union’s approach to involve increasingly more third states in controlling the migration and to transfer beyond the jurisdiction of the Union the task of the protection of refugees, which comes in large part to address the weaknesses of the intra-European solidarity has been the subject of numerous criticisms (Zapata-Barrero, 2013; Den Hertog, 2013). These aims, on the one hand, the asymmetry of the relationship between the Union and third States, that there is no balance of power, being therefore one unilateral. We are speaking, for example, of readmission agreements, although the readmission obligation is a bilateral one, it is unlikely that an EU member state to be in a position to take back an illegal immigrant from a third country. At the same time, instead of focusing on the root causes of migration, the European policy focuses almost exclusively on controlling migration as far away from the borders of the Union, thus neglecting its responsibility towards the third countries. The EU has too little in view of the needs of the states origin or the transit of migrants, in fact, binding countries that already suffer from inequality and lack of infrastructure to take back migrants or refugees in exchange for the development aid. Those countries should bear the financial burdens related to readmission, while much of the development aid granted are used for controlling the borders, as in the case of failure the aid may be suspended. In addition, although the promotion of the legal migration is included in agreements with the third countries, and in fact the EU labor market only supports qualified migrants, which proves once again that it has exclusive interests.

The most important criticism is aimed at “double standard” that uses Union with regard to the protection of the fundamental rights (Dover, 2008). Intending to promote the rule of law and to protect the fundamental rights, the EU does in fact this only in relation to their own nationals, neglecting the citizens of other states. From this point of view, the cooperation with the third states is not based on common standards and guarantees between the parties, and, the human rights are not a criterion for the selection of states that are concluded with the readmission agreements or the regional protection programs. The conclusion of such agreements with countries such as Pakistan, Bangladesh, Sri Lanka or Libya, where persecution for religious reasons, political or ethnic origin are well-known, being seriously jeopardized the lives of migrants returned to those countries, clearly shows the concern of the Union for the Protection of the Human Rights (Rodier, 2006).

The doctrine (Zapata-Barrero and Pécoud, 2012) highlights the fact that, at a more general level, the way in which the European Union tackles the problem of migration contribute to a transformation of international relations, which is no longer based on trade or defense, but on the movement of people. Beyond the fact that it represents a new approach, transforming the movement of persons into a geopolitical problem and international cooperation and focusing on limiting its strong ethical implications worldwide, perpetuating inequalities. Its result is the decrease in the human rights, especially those of the refugees under international standards.

c) Unfair and Discriminatory Asylum Proceedings

Common European Asylum System (SECA) is based primarily on the Dublin Regulation adopted in 1990 and revised several times, the last time in the year 2013 (Council Regulation (EU) no 604/2013), according to which an application for asylum lodged by a third-country national or a stateless person shall be examined by a single member state, which is the first member state in which the person concerned entered (except where they have family in another country). The asylum procedures directive (Directive 2013/32/EU) lays down rules as regards the examination of asylum applications. The European rules apply but only to people who can get on the territory of a Member State, at the border or in a transit zone.

To discourage the phenomenon called “asylum shopping”, when an asylum seeker lodges applications for asylum in several European countries to increase their chances of receiving protection, Dublin Regulation prohibits multiple applications, including the case of waiting too long for processing the request, denial or even personal preferences.

Beyond that it raises an ethical issue related to the free movement of persons, the regulation presents a series of dysfunctionalities which limits the opportunities for them to represent a viable solution for the protection of the persons in need. On the one hand, it allows the exercise of excessive pressures on the asylum systems of the Member States which have borders with other States outside the European Union, while the number of applications to be reviewed by the EC countries of Central Europe is infinitely lower. Although it was established a mechanism for the allocation of responsibilities concerning the examination of applications for asylum, which involved input from the States, the States responsible for processing the application, for asylum requests, for the transfer of responsibility between Member States is done after a certain period of time, and after a review of the application. The administrative systems of the frontline states are further overburdened, which leads to non-compliance with EU rules establishing a maximum duration for processing the requests. It appears all the more problematic as the duration of the application of the procedures of return or transfer to other member states, the asylum seekers are waiting in detention the completion of the procedures, thus being separated from family. As it was found in the European Court of Human Rights (ECHR, 2011), the asylum seekers often have to endure conditions of receiving under the minimum standards imposed by the EU, in which their fundamental rights and dignity are affected.

A second important critique of the Dublin system is that, although it is based on the premise that the existence of harmonized rules at European level allows asylum seekers to enjoy similar levels of protection in all EU Member States, the reality is another. The many delays in the implementation of European legislation (in particular the Council Directive 2013/32/EU asylum procedures and the Directive 2013/33/EU relating to reception conditions) and different interpretation of the European rules in this area makes the national law and practice in matters of asylum differ considerably from state to state, which lead to different treatments of the asylum seekers at both the procedure and at the level of reception conditions for asylum applicants, making the discriminatory situations.

6.2. Recent Developments. Towards a more Ethical and Fairer European Migratory Policy?

After presenting the European Agenda concerning migration, in May 2015, numerous measures have been adopted for its implementation, some of which were intended for resolving urgent issues related to the massive flow of refugees and migrants, while others are considering reforming for the European migration policy instruments to enable it to better manage migration on the medium and long term. Although in the case of both categories of measures are often invoked humanitarian considerations (saving lives), the concern for the protection of the fundamental rights, the conditions of a worthy reception or the solidarity between the member states and with third countries, it may find that these considerations were rather intended to justify the initiation of more restrictive policies and measures strengthened surveillance at the external borders. In contradiction with the rules and the values of the Union, the measures taken recently exacerbating the negative immigration approach, perceiving it as a threat that requires enhanced control measures. Although maintaining this general philosophy of the European migration policy is itself criticized, some of the measures taken involve a higher dose of concern, given the potential which blatantly contradicts the European values and affect the rights and dignity of the migrant persons.

First, it is about the complex recent measures taken to stop the refugee arrivals, some of which are contrary to the international law, which are providing the criticism that the assistance to persons in danger is not a priority for the EU. Between them, the transformation of Frontex, renamed “The European Agency for the Border Police and the Coast Guard”, in the “watchdog” of Europe is among the most criticizing. Its mandate has been strengthened, with a considerable increase in its human and financial resources, a role reinforced in return operations. The Agency has a “right to intervene” where a Member State does not cope with the pressure of migration and has a greater degree of autonomy and can organize operations or carry out exchange of information with a growing number of third countries, some of which have great inadequacies in respect for the human rights, and this without any form of democratic control. The Agency has the opportunity to move quickly at the external borders of the Union and to ban the path of those who try to cross them (which only increase precautionary travel), and, in spite of the principle of non-refoulement, may disembark the persons it intercepts, in a port designated as “safe”, including non-European States. The migrants are thus forced to seek asylum in countries that do not provide sufficient guarantees for the protection of their rights.

The multiplication and modernization for the monitoring of the movements of persons, such as EUROSUR program or the package on “Smart borders” that come to fill the reinforcement of the Frontex role, aside from the fact that they are attempting to certain fundamental rights (right to privacy or data protection), to demonstrate the transformation of Europe into a fortress. In fact, an e-Fortress (Mészáros, 2012) guarded with the secure invisible fences of the most sophisticated technologies, to implement them the colossal sums are mobilized.

Another criticizing direction of action which brings an additional degree of stigmatization of migrants, affecting their dignity, is excessive focus on detention and deportation in relation to the measures for increasing the effectiveness of the return policy. Administrative detention, which should be

possible only in exceptional circumstances, becomes the rule, and emphasis, and it is placed on increasing “performance” mechanisms in the field, through the substantial increase in the financial resources made available. The transformation mechanisms intended to facilitate the receiving of migrants (the so-called “access points” or hotspots) in detention centers is a development direction of confirming this action. For example, although they are regarded by the human rights organizations as places where migrants live in conditions of degrading, even cruel, become hotspots, according to a law adopted recently by Greece (Law nr. 4375/2016), locations in which they will be considered asylum seekers during the asylum procedure. At the same time, according to a communication from the European Commission (European Commission, 2016), although originally intended for registration and displayed for quick transfer of migrants before their hotspots to the continent, will have to be reconfigured to become mechanisms for “accelerated readmission procedures to migrants in irregular situation”, in other words, transitional places intended for sending migrants outside European borders. The nationality of the applicant for international protection is the basis for assessing the primary legitimacy of a claim of protection, taking into account a “rapid refund” for migrants who do not have the appropriate nationality (only those coming from Syria, Iraq and Eritrea are deemed to have clearly in need of international protection). Such an approach is difficult to accept because they do not distinguish between individual cases and can have negative consequences on the family unit, many of those who may be the subject of return of having family members already present in other member states.

At least as controversial, representing a serious challenge to the basic principles of the international law of the refugees, the state of law and the democratic accountability of the Union, is the conclusion of the agreement between the EU and Turkey, from March 2016. Viewed as a solution to reduce migration flows towards Greece, this agreement is considered to be devoid of morality, ethics, discriminatory, threatening to jeopardize the rights of refugees. By virtue of this agreement, all new migrants in irregular situation which, as of March 20, 2016, the frontier from Turkey to the Greek Islands will be returned in Turkey. Also, instead of each immigrant received by Turkey, the EU will accept a Syrian refugee. The criticisms formulated by the international organizations (Council of Europe, 2016) and numerous observers to this agreement mainly aimed at the fact that the returns object may be Turkey and migrants who are potentially eligible for obtaining asylum (people in real danger in their home states) and Turkey cannot be considered a “safe” third country in terms of access to the asylum procedure, nor in respect of the protection granted. In conditions in which the fundamental rights in this state have not ceased to degrade, there are serious risks of deportation of such persons by their country of origin (for example, Syria or Afghanistan), where life is put into danger. The rule of receiving by the EU of a Syrian refugee (excluding Syrians not covered by the agreement, and migrants who come from other areas of conflict) in exchange for another returned to Turkey, though presented as a means of promoting legal access to the asylum, is immoral, because it assumes that the number of refugees who could be accepted by the EU depends on the number of refugees prepared to risk the life of other routes to reach the borders of the EU. At the same time, focusing solely on the Syrians, they induce the idea they deserve better treatment in relation to migrants who come from other areas of conflict, and thus contrary to the principle of non-discrimination on grounds of nationality enshrined in the European Law and guaranteed by article 3 of the Geneva Convention relating to the status of refugees.

7. Conclusion

A significant number of scientific studies (Schotel, 2012; Carens, 2013; Rochel, 2016) reveals the need for a moral approach to immigration, which derives from the existence of the fundamental moral principles that should govern the practices of limiting immigration and to shape immigration policies of democratic nations. These studies highlight, however, the difficulties encountered in the pursuit of such

an approach, the difficulties arising different perspectives on this subject posed, making a distinction between an ideal world in which borders are open, and the discretionary control over immigration becomes incompatible with fundamental democratic principles, and one that is framed by the political constraints of the contemporary world.

It is obvious that today the European Union is facing major challenges related to the large number of people who want to come to Europe, faced the challenge of existing instruments for action to be misfit. In fact, a part of the doctrine (Schotel, 2012) supports the idea of the lack of need of a common migration policy because it detracts from what is being done or could be done at the regional and national level and dilutes responsibility.

Without intending to put into question the political virtues of the European Union in matters of asylum and migration or need for it, we tried out the above interpretation of some of the recent actions undertaken at the European level in this field in terms of the values on which the European Union is built, to see that it manifested as a power too. While values are at the basis of the European construction calls for respect for the dignity of the human being, freedom, equality, solidarity, democracy and the rule of law, the European Union and its members appear rather as one of isolation, in which refugees and migrants are seen as “harmful elements” destabilizing, to be treated as such. As a result, instead of having to make common front around the humanitarian purposes, to cooperate in programs for relocation or to adopt common fair procedures, the European Union members have agreed on measures to restrict migration into the EU aimed at strengthening border control, tightening asylum rules and transfer the responsibility for the protection of asylum seekers beyond its borders. Some of the measures adopted recently emphasizes negative immigration approach, perceiving it as a threat that requires enhanced control measures.

The fact that today almost 70% of the world’s refugees are kept from developing the states argues for a greater involvement of the member states in ensuring the protection of those in need, not to confirm the scenario of Europe as a “Fort”, which would be very dangerous for both the normative tradition and European humanitarian and human rights values (Neisser, 2007).

Instead of the extremely expensive projects, the European Union should equip themselves with a coherent and ambitious policy based on solidarity between the member states, on measures to facilitate the legal migration, solid partnerships with the third countries and the provision of support for economically significant countries of origin. This policy should, first of all, bear in mind the care to preserve the dignity of persons seeking protection in the EU and not violating it.

References

- Bendel, P. (2005). Immigration Policy in the European Union: Still bringing up the walls for fortress Europe? *Migration Letters*, 2(1), pp. 20-31.
- Carens, J. H. (2013). *The Ethics of Immigration*. Oxford: Oxford University Press.
- CJEU (2011). Judgment of 6 December 2011 in case C-329/11, Alexandre Achughbabian/Préfet du Val-de-Marne. EU:C:2011:807.
- Council of Europe (2015). *Criminalisation of irregular migrants: a crime without a victim*. Parliamentary Assembly. Resolution 2059 (2015).
- Council of Europe (2016). The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016. Parliamentary Assembly, Committee on Migration, Refugees and Displaced Persons, Doc. 14028.
- Den Hertog, L. (2013). *Fundamental Rights and the Extraterritorialization of EU Border Policy: A Contradiction in Terms?* In: D. Bigo, E. Build, & S. Carrera (Eds.), *Foreigners, Refugees or Minorities? Rethinking People in the Context of Border Controls and Visas* (pp. 205-226). Farnham: Ashgate.

- Dover, R. (2008). Towards a Common EU Immigration Policy: a Securitization Too Far. *European Integration*. vol. 30 (1). 113-130.
- ECHR (2011). Case of M.S.S. v. Belgium and Greece. Application no. 30696/09. Judgment of 21 January 2011.
- European Commission (2015). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A european agenda on migration*. Brussels: COM(2015) 240 final.
- European Commission (2016). *Communication from the Commission to the European Parliament, the European Council and the Council - Next Operational Steps in EU-Turkey Cooperation in the Field of Migration*. Brussels: COM(2016) 166 final.
- European Union: Council of the European Union, *Council Directive 2001/51/EC* of 28 June 2001 Supplementing the Provisions of Article 26 of the Convention Implementing the Schengen Agreement of 14 June 1985, 9 August 2001, Official Journal of the European Union, L 187/45, 10 July 2001.
- European Union: Council of the European Union, *Council Directive 2002/90/EC* of 28 November 2002 Defining the Facilitation of Unauthorised Entry, Transit and Residence, 28 November 2002.
- European Union: Council of the European Union, *Directive 2008/115/EC* of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, OJ L. 348/98-348/107; 16.12.2008, 2008/115/EC.
- European Union, *Directive 2009/52/EC* of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 18 June 2009, 2009/52/EC.
- European Union: Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person* (recast), 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU)No 604/2013.
- Geddes, A. (2000). *Immigration and European Integration: Towards Fortress Europe?* Manchester: Manchester University Press.
- Greece: *Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC* [Greece], 3 April 2016.
- Mészáros. E. L. (2012). Quo Vadis' United Europe: An E-Fortress in Becoming or the Promise Land "Eldorado". *Annals of University of Oradea, International Relations and European Studies Series. TOM IV*, pp. 173-192.
- Neisser, H. (2007). *European Migration Policy*. In B. Gebrewold (ed.), *Africa and Fortress Europe: Threats and Opportunities*, Aldershot: Ashgate Publishing Limited.
- Pécoud, A. & De Guchteneire, P. (2009). *Migrations sans frontières: essais sur la libre circulation des personnes*. Paris: Éditions UNESCO, Collection Études en sciences sociales.
- Rochel, J. (2016). *Repenser l'immigration. Une boussole éthique*. Lausanne: Presses polytechniques et universitaires romandes.
- Rodier, C. (2006). *Analysis of the external dimension of the EU's asylum and immigration policies - summary and recommendations for the European Parliament*. The European Parliament, Policy Department.
- Schotel, B. (2012). *On the Right of Exclusion: Law, Ethics and Immigration Policy*. Oxford and New York: Routledge.
- Union Agency for Fundamental Rights - FRA (2014). Report - Criminalisation of migrants in an irregular situation and of persons engaging with them. Retrieved from <http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>

Zapata-Barrero, R. (2013). The External Dimension of Migration Policy in the Mediterranean Region: Premises for a Normative Debate. *Revista del Instituto Español de Estudios Estratégicos*, 2, pp. 1-35.

Zapata-Barrero, R. & Pécoud, A. (2012). New perspectives on the Ethics of International Migration, special issue of *American Behavioral Scientist*, 56(9), pp. 1159-1164.