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Improving legal protection of third country migrants and their access to legal redress

Ana Ionela Cristea¹

Abstract: The integration of third country migrants into society has gained a high importance in the European Union Member States. This paper aims to identify the existing practices in providing legal aid to the third country migrants and the instruments used for their integration.

Keywords: legislation, migrants, integration.

In the European Union, “third country migrants” is a term often used in the context of migration, together with “foreign nationals”, making reference to individuals, who are not from the EU country in which they are currently living. According with EUROFOUND², the term “third country” is used in the Treaties, where it means a country that is not a member of the Union. This meaning is derived from “third country” in the sense of one not party to an agreement between two other countries.

The integration of third country migrants into society is very important to improve the opportunities of legal migration.

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² <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/thirdcountrynationals.htm>.

This paper summarizes the policies, the main pieces of legislation and the instruments agreed by the European Union on immigration, since the adoption of the Treaty of Amsterdam in October 1997.

The **Amsterdam Treaty**³, officially the *Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts*, approved by the European Council held in Amsterdam on 16-17 June 1997, was signed on 2 October 1997 and entered into force on 1 May 1999.

Under Article 73k, the Council should adopt the next measures within a period of five years after the entry into force of the same Treaty:

(1) measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:

- (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,
- (b) minimum standards on the reception of asylum seekers in Member States,
- (c) minimum standards with respect to the qualification of nationals of third countries as refugees,
- (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;

(2) measures on refugees and displaced persons within the following areas:

- (a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,
- (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;

³ <http://www.eurotreaties.com/amsterdamtreaty.pdf>.

(3) measures on immigration policy within the following areas:

- (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion,
- (b) illegal immigration and illegal residence, including repatriation of illegal residents;

(4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

The **Tampere European Council**⁴ was held on 15 and 16 October 1999. According to the main conclusions of this meeting in Tampere (Finland), the European Council is determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam.

The part A of the conclusions of meeting in Tampere deals with *A COMMON EU ASYLUM AND MIGRATION POLICY*. The development of this policy has to include the following elements:

- 1) Partnership with countries of origin.*
- 2) A Common European Asylum System.*
- 3) Fair treatment of third country nationals.*
- 4) Management of migration flows.*

⁴ http://www.europarl.europa.eu/summits/tam_en.htm.

The **Hague Programme**⁵, adopted at the European Council of 4 and 5 November 2004, sets out 10 priorities for the Union with a view to strengthening the area of freedom, security and justice in the next five years:

- 1) *Strengthening fundamental rights and citizenship.*
- 2) *Anti-terrorist measures.*
- 3) *Defining a balanced approach to migration.*
- 4) *Developing integrated management of the Union's external borders.*
- 5) *Setting up a common asylum procedure.*
- 6) *Maximising the positive impact of immigration.*
- 7) *Striking the right balance between privacy and security while sharing information.*
- 8) *Developing a strategic concept on tackling organised crime.*
- 9) *A genuine European area of justice.*
- 10) *Sharing responsibility and solidarity.*

In September 2005, the Commission Communication “**A Common Agenda for Integration**”⁶ provided a framework for the integration of third-country migrants in the European Union, mentioning new actions necessary at EU and national level, for strengthening the implementation of the Common Basic Principles:

⁵http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/11600_2_en.htm.

⁶ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union /* COM/2005/0389 final */

1. *Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.*
2. *Integration implies respect for the basic values of the European Union.*
3. *Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible.*
4. *Basic knowledge of the host society's language, history, and institutions is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration.*
5. *Efforts in education are critical to preparing immigrants, and particularly their descendants, to be more successful and more active participants in society.*
6. *Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration.*
7. *Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens.*
8. *The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law.*
9. *The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.*

10. Mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration in public-policy formation and implementation.

11. Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.

This was followed in 2008, by a further Commission Communication: “**A Common Immigration Policy for Europe: Principles, actions and tools**”⁷. According with this communication, the common principles underlying the further development of the common immigration policy are grouped under the three headings of prosperity, security and solidarity.

PROSPERITY: the contribution of legal immigration to the socio-economic development of the EU

1. Prosperity and Immigration: Clear rules and a level playing field
2. Prosperity and Immigration: Matching skills and needs
3. Prosperity and Immigration: Integration is the key to successful immigration

SOLIDARITY: coordination between Member States and cooperation with third countries

4. Solidarity and Immigration: Transparency, trust and cooperation
5. Solidarity and Immigration: Efficient and coherent use of available means
6. Solidarity and Immigration: Partnership with third-countries

⁷Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A common immigration policy for Europe: Principles, actions and tools {SEC(2008) 2026} {SEC(2008) 2027} (presented by the Commission) /* COM/2008/0359 final */.

SECURITY: effective fight against illegal immigration

7. Security and Immigration: A visa policy that serves the interests of Europe and its partners
8. Security and Immigration: Integrated border management
9. Security and Immigration: Stepping up the fight against illegal immigration and zero tolerance for trafficking in human beings
10. Security and Immigration: Effective and sustainable return policies

In July 2011, the Commission proposed the “*European Agenda for the integration of non-EU migrants*”⁸, focusing on the following key areas: a) integration through participation, b) more action at local level and c) involvement of countries of origin.

a) INTEGRATION THROUGH PARTICIPATION

“Integration is a process that starts on the ground and integration policies should be developed with a genuine 'bottom-up' approach, close to the local level. Such policies include actions such as support for language learning, introductory measures, access to employment, education and vocational training and the fight against discrimination, which all aim at increasing migrants' participation in society.

Integration requires the engagement by the receiving society in accommodating the migrants, respecting their rights and cultures and informing them about their

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Agenda for the Integration of Third-Country Nationals, COM(2011) 455 final.

obligations. At the same time, migrants need to show the willingness to integrate and to respect rules and values of the society in which they live”⁹.

1. The socio-economic contribution of migrants

1.1. Acquiring language knowledge

1.2. Participation in the labour market

1.3. Efforts in the education system

1.4. Ensuring better living conditions

1.5. Better use of EU funding

b) MORE ACTION AT LOCAL LEVEL

“Integration policies should be formulated and implemented with the active involvement of local authorities. Local authorities are responsible for a wide range of services and activities and they play an important role in shaping the interaction between migrants and the receiving society”¹⁰.

1. Addressing especially disadvantaged urban areas

2. Improvement of multi-level cooperation

3. EU financial support to local action

c) INVOLVEMENT OF COUNTRIES OF ORIGIN

“Countries of origin can have a role to play in support of the integration process in three ways: 1) to prepare the integration already before the migrants' departure; 2) to support the migrants while in the EU, e.g. through support via the Embassies; 3) to prepare the migrant's temporary or definitive return with acquired experience and knowledge”¹¹.

⁹ Idem, page 4.

¹⁰ Idem, page 8.

¹¹ Idem, page 10.

- 1. Pre-departure measures in support of integration*
- 2. Beneficial contacts between diaspora communities and their countries of origin*
- 3. Circular migration and development in countries of origin*

The European Union set up a number of instruments to support the integration, such as:

-The **Network of National Contact Points on Integration**¹² is a forum for the exchange of information and good practice at EU level with the purpose of finding successful solutions for integration of immigrants in all Member States and to ensure policy co-ordination and coherence at national level and with EU initiatives.

-The **European Integration Forum**¹³ provides an opportunity for civil society organisations to express their views on migrant integration issues and to discuss with the European institutions challenges and priorities.

-The **European Web Site on Integration**¹⁴ is an initiative of the European Commission under the responsibility of the Directorate-General Home Affairs. It provides policy makers and practitioners working on integration in Europe with a tool for the exchange of information and good practice.

-The **Handbook on Integration for policy-makers and practitioners**¹⁵ acts as a driver for exchange of information and best practice, and enable the development and promotion of policy initiatives. The three editions of the Handbooks are collaborative products of the European Commission, the National Contact Points on Integration, and

¹² <http://www.unaoc.org/ibis/2010/02/26/national-contact-points-on-integration-european-commission/>.

¹³ <http://ec.europa.eu/ewsi/en/policy/legal.cfm>.

¹⁴ <http://ec.europa.eu/ewsi/en/>.

¹⁵ http://www.migpolgroup.com/projects_detail.php?id=10.

MPG (Migration Policy Group) as independent consultant, all of whom can be seen as "editors" of the Handbooks. The first edition was published in November 2004, the second edition in May 2007 and the third edition in April 2010.

In addition of these instruments, there are a number of funds and programmes for the integration of third country migrants, such as:

- The Community Action Programme to Combat Discrimination (2000-2006)
- The EQUAL Community Initiative Programme (2000-2006)
- The European Regional Development Fund (2000-2006)
- The URBAN Community Initiative Programme (2000-2006)
- The European Integration Fund (2007-2013)
- The European Social Funds (2007-2013)
- The European Regional Development Fund (2007-2013)
- The Life Long Learning Programme (2007-2013)
- The Progress Programme (2007-2013)
- The Multiannual Financial Framework (2014-2020) in the area of Home Affairs. This package covered 4 legislative proposals which together provide for the creation of an Asylum, Migration and Integration Fund (AMIF) and an Internal Security Fund (ISF).

In conclusion, although the European Union Member States are responsible for the integration instruments, only by an active participation of the society, at all the levels, it is possible to obtain an integration of migrants. However, the cooperation between different stakeholders (Non Governmental Organizations, International Organizations, Government Organizations, Employers, Learning centers, etc) is the key of the integration.

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