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The Rights of Albanian Emigrants and Returnees in Albania

Although Albania has improved its legal framework for migration, there are weaknesses in relation to the implementation of the framework, including a lack of financial resources and well-trained human resources.

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The migration phenomenon in Albania

Migration is an important phenomenon in Albania. Official statistics indicate that the number of people who attempt to make an irregular border crossing is still high². During 2008, border police stopped 16,032 potential emigrants from crossing the Albanian border irregularly. The main driver continues to be the lack of employment opportunities and poverty in Albania. While border control and management have been strengthened (EC, 2008), reflected in the large number of apprehended potential irregular migrants, there are still cases of irregular migration from and into Albania. Due to its nature, it is not easy to collect accurate data on the number of irregular border crossings. Migration issues are considered a priority for Albania due to the high number of emigrants, with around 27.5 per cent of the population living abroad (IOM, 2008). The fight against irregular migration has been included in the EU's agenda for Albania and migration management is an integral part of government policy in Albania.

The return of irregular migrants to and from Albania is carried out in two ways: voluntary return and forced return. The number of voluntary returns of irregular immigrants is quite limited, as the majority of irregular emigrants leave Albania at any cost due to poverty and lack of opportunities to earn a living. Forced return is mainly covered by the readmission agreements that Albania has signed with most European countries and with the European Union,

which is one of the main tools used to fight irregular migration.

Legal framework for migrants in Albania

Over the past few years, Albania has made progress in approving new legislation for migrants and border management in order to fulfil its obligations under its Association and Stabilisation Agreement with the EU, the various readmission agreements, and other international standards. The legal framework in this area has been improved and it is almost complete.

More concretely, the Albanian Government has approved the National Strategy on Migration (DCM No.760, 2004) and its Plan of Action (DCM No.296, 2005), which foresee all the necessary steps to be taken by the Albanian Government for the development of a comprehensive state policy on migration; to address important issues relating to the protection of the rights of Albanian emigrants abroad; and for the establishment and consolidation of Albanian communities abroad. Among the problems faced by Albanian communities abroad is a lack of information regarding their rights and duties in receiving countries, as well as difficulties related to their economic and social integration. The services provided by Albanian organisations abroad are not at the level that they should be to assist Albanian emigrants in the integration process. The diplomatic missions (embassies) should also play a more active role in this regard.

Albania has established cooperation with its neighbouring countries for border control and migration management, in particular, through the establishment of joint border crossing points (JBSPs). In September 2007, Albania adopted a new National Strategy for Integrated Border Management and a related Action Plan. This Strategy and the existing Strategy on Migration provide a series of consolidated measures aimed at improving the performance of the institutions involved in border control.

In July 2008, a new law on foreigners was approved setting out principles and regulations for foreigners entering Albania and guaranteeing their rights. The new law 'On the control and supervision of the State Border', approved in January 2009, provides a good legal basis for the respect of the rights of migrants at border crossing points³. It is, however, too early to assess the effectiveness of its

implementation.

The legal framework for migration in Albania is also governed by various international instruments ratified by Albania. Efforts to channel migration fluxes have focused on the seasonal employment of Albanian citizens under bilateral agreements. Albania has already signed such agreements with Greece, Italy and Germany, but there has been a low implementation rate. This situation must be primarily addressed by policymakers, because the Stabilisation Association Agreement (SAA) with the EU also serves as a promotional instrument for seasonal employment, which in turn stimulates the signing of bilateral agreements, increasing possibilities for legal immigration.

Additionally, Albania has started negotiations for visa liberalisation with the EU and is working on the production of a biometric passport; the computerisation of civil registry data has already been completed.

Problems in practice

Albania has made progress on the adoption of new migration legislation in conformity with European standards, but the main problem is with the implementation of the legal framework, and, notably, the lack of financial resources and well-trained workforce.

Despite the progress made, one of the problems encountered by AHC during its monitoring activities was the non-application of the provisions of the readmission agreements in relation to people returned to Albania by other countries. The return of illegal migrants from other countries is done without preliminary notification and without the necessary documents translated in both languages – procedures that are necessary to guarantee the rights of returnees.

Infrastructure at border crossing points

While progress has been made at some border crossing points (BCPs) in terms of reception facilities for readmitted persons, further investment is needed at many others. Readmitted persons stay at the BCPs until their registration and identification procedures are finalised, except when they are convicted of, or being investigated for, a criminal offence. Problems occur when the legal procedures for notification of returnees are not respected, which often results in 100 to 150 returnees arriving at once at the same BCP without identification documents. These people are of different ages, some with health problems,

1 Founded on 19 December 1990, the Albanian Helsinki Committee (AHC) is the first organisation for the protection of human rights and freedoms in Albania. The AHC's leading mission is to contribute to improving respect for human rights and strengthening the rule of law in accordance with the Helsinki Final Act and other international legal obligations undertaken by the Council of Europe and United Nations, and in line with human rights norms promoted by the European Union. Migrants' rights have been one of the main areas of AHC activity since 2000. AHC's activities and interventions in this field have been realised due to the financial support and the contribution of the Norwegian Helsinki Committee, which is one of AHC's main partners.

2 For more information, see the Report of Albanian State Police on the Progress Work during 2008, available from: <www.mrp.gov.al>.

3 The AHC has offered legal and other assistance to improve the legal framework in this field in conformity with human rights standards.

and consist of minors, women, trafficked persons, and so forth. Under these circumstances, the legal procedures take time and readmitted persons stay at the BCP for several hours and even days (when there are problems with their identification). The situation is becoming more problematic due to the limited number of border police, the condition of the premises, the lack of phytosanitary, veterinary and health services, and inadequate quantities of food. Some BCPs have undergone reconstruction, such as Hani i Hotit, and improvements have been made in others⁴. However, in some of the BCPs, infrastructural capacity is poor; only 15 out of 26 have been linked electronically via the Total Information Management System (TIMS) and equipped with the relevant facilities. The current infrastructure does not allow for returned persons to be treated in compliance with European and international human rights standards. There is a need to ensure facilities that offer services for women and children, and persons claiming to be victims of human rights violations (particularly at Kapshtica, Tushemisht, Tre-Urat, and Saranda Harbour BCPs). In addition, there is a lack of facilities built in compliance with the law for those deported through penal precession and returned to Albania. A lack of proper facilities for interviewing returnees was noted at some border crossing points, including: Qafe Bota, Gorrice, the GOS point at Bajza, Saranda, and the Port of Vlora. Lack of heating and food, as well as lack of logistical and technical equipment is a concern at almost all BCPs.

On the matter of the implementation of obligations undertaken by the Albanian Government in connection with the Strategy on Migration, and in accordance with the the EU Aquis, institutional coordination is needed, as well as the speedy enactment of legislation for the reintegration of Albanian migrants who have voluntarily returned. Towards reintegration, the Albanian Government should ensure the insurance of work permits and the effective implementation of the law, as well as recognising and acting in potential migration zones and conducting information campaigns for migrants and foreigners residing in Albania (SOROS, 2008).

Professional capacities of border control point administration

Several specialised training sessions have been conducted for BCP staff by the Training Department of the General Directorate of State Police, in close cooperation with different international and national actors⁵. AHC has contributed in this direction, organising four different training sessions with the border administration in Korca, Shkodra, Tirana and Gjirokastra region on respecting human rights. A broader, longer-term training policy aimed

at building capacity to detect falsified documents, illegal migrants or victims of trafficking has yet to be implemented. Although there are training sessions for staff from the respective institutions on border management, a lack of sufficient border staff and high staff turnover have been identified as issues.

Monitoring of the rights of Albanian emigrants

The observation of the rights of Albanian emigrants who live in Greece and of rights violation cases (of Albanians) before the Greek courts and the European Court of Human Rights (ECHR) in Strasbourg is an important tool in protecting migrant's rights. Several cases brought against the Greek State for the violation of the rights of Albanian emigrants have been won at the ECHR in Strasbourg and reparation ordered⁶.

In addition, AHC has noticed that Albanian organisations abroad are charged with the task of tackling the problems of Albanian emigrants who live out of the country. Such organisations need to be more organised, cooperative and professional, and to network among themselves in order to provide better lobby groups to advocate for the rights of Albanian emigrants. State authorities should also strengthen their cooperation with Albanian organisations abroad; the State should play an active role in increasing their professional capacities and meet frequently with them in order to better understand their needs and help them fight for the rights of Albanian emigrants. ■

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4 However, Shkodra Lake BCP is still not operational.

5 Such as PAMECA, ICITAP, Delegation of European Commission, International Organization for Migration (IOM), and different embassies, among others.

6 AHC has been cooperating closely with the Greek Helsinki Monitoring on the observation and monitoring of the rights of Albania migrants. For more information see <www.ahc.org.al>.

Immigration in Belgium

Belgium's emphasis on migration management according to labour market needs has led to restrictive measures against documented and undocumented migrant workers. The detention of undocumented migrants, as practised by Belgian authorities, violates migrants' human rights.

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Vulnerability of migrant workers¹

Since 1974, Belgian borders have been officially closed to labour migration. However, this closure has not been a reality. Labour migration has remained possible for highly qualified workers and low skilled workers also manage to enter irregularly or through other migration channels, such as asylum or marriage, which is also becoming more and more restrictive. Currently, like other European countries, Belgium has a large group of undocumented migrants who work mostly in undeclared jobs to survive. Many of these migrants are experiencing labour rights violations.

The labour of undocumented migrants is seen as something that needs to be eradicated, both because it is assumed to involve social fraud and because it is believed to attract more irregular migration. In Belgium, the law reserves the heaviest sanctions for employers who hire workers without residence and/or work permits. In the last decade, efforts to fight irregular migration and employment have been stepped up. Several police and inspection services work with the Foreigners' Office to conduct large-scale workplace raids.

While the accession of new countries to the European Union regularised large groups of undocumented workers, transitory measures still restrict access for new EU citizens to the labour market as paid workers. Because of the free movement of services, however, they can work freely as independent contractors. Restrictions for A8 Countries² were lifted on 1 May 2009, but those for Bulgarians and Romanians remain in place.

In 2008, in line with the debate at the European level, the discourse on labour migration shifted. From the very start of her term, Annemie Turtelboom, Minister of Migration (Flemish Liberals) indicated her preference for migration management according to labour market needs: "we should pick

and choose 'useful' immigrants, and restrict the arrival of migrants that depend on social benefits". The shift in the debate was inspired by the growing labour shortage, especially in the Flemish north and before the global economic crisis in the second half of 2008.

This shift also changed the nature of discussions about undocumented migrants. Not only did the Minister of Migration announce, in March 2008, the regularisation of people with jobs, she also pushed the condition of having a job, or at least of having the skills to find one, as a requirement for the regularisation of migrants for humanitarian reasons. Furthermore, migrants should, preferably, be restricted to jobs in professions experiencing labour shortages.

What is missing in these debates is a reflection on the impact of restrictive migration measures on

the position of both documented and undocumented workers in the workplace. Workplace raids mostly result in undocumented workers being deported, or simply disappearing, and labour rights violations often remain unaddressed. Although the law provides for heavy sanctions on employers, these sanctions are difficult to enforce, if they are ever imposed. Hiring undocumented workers remains highly attractive to unscrupulous employers. The EU Directive on sanctions for employers of undocumented workers, adopted in 2008, is unlikely to change this situation.

EU accession has not saved new EU workers from this precarious situation. Many of them are still part of the irregular labour market: Bulgarians, Romanians and Polish were among the main nationalities deported in recent years. Many others are

BOX 6: Regularisation: Hope and despair

Rix Depasse
CIRE

Following a complaint by the Forum Asile et Migrations, a platform of more than 120 organisations of which the CIRE is an active member, the Federal Ombudsman¹ produced a report² in November 2008 recommending that the Foreigners' Office ensure a clearer line of conduct on dealing with regularisation requests by persons of irregular stay.

The administration of the Foreigners' Office has the discretionary power to evaluate individually each regularisation request. However, the Ombudsman noted that, "in spite of what the administration contends, the current Directives are far from being clear". No text of legal value specifies the criteria for regularisation, in spite of the promise by the Minister of Immigration, Annemie Turtelboom, who declared in mid-2008 that she would implement a government agreement of March 2008 by providing precise criteria for the regularisation of a number of categories of undocumented immigrants.

According to the Ombudsman, this legal and political situation triggers "judicial uncertainty and a lack of legitimate trust" by these people. The content of the government agreement gave them the hope of regularisation, while, in reality, the administration proceeded with arrests, detentions and expulsions. Judicial uncertainty was also reflected in the divergent responses given to the various undocumented migrants: people who carried out hunger strikes often received different responses in terms of residence and work permits than others in a similar situation who did not participate in this kind of action. It is worth noting that the year 2008 was characterised by numerous protests by undocumented migrants; notably, the occupation of buildings, often leading to hunger strikes. Hundreds of people were involved in these protests, which took place in universities, churches, disused offices and even cranes.

The Ombudsman concluded that such extreme actions tend to be reinforced when the State's response is uncertain. However, this appeal was not seriously addressed until July 2009 when, after political reorganisation, a new Immigration Minister was assigned. The new political configuration has brought about new measures for regularisation that address the demands of the Federal Ombudsman for legislation, giving a clear line of conduct on regularisation.

1 The Federal Ombudsman is an independent and impartial institution that examines complaints regarding the acts and functioning of Federal administrative authorities.

2 This report is available from: <www.federaalombudsman.be/fr/bibliotheque/recommandations/recommandations-officielles/2008/ro-0803>; the media release by CIRE is available from <www.cire.irisnet.be/ressources/presse/2008-11-13.html>.

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2 The term A8 refers to the 8 Central and Eastern European countries that joined the EU in 2004.

misclassified as independent contractors, which leaves their actual employers with no obligation to respect their labour rights. In the debates on transitory measures, the labour conditions of the A8 workers are barely considered.

The announced opportunity for undocumented migrants to regularise their status has not yet materialised (as at July 2009)³. In the meantime, workers have been lured into 'buying' work contracts and working for companies offering them a 'declared job', or even more dubious propositions, all in the hope of enhancing their chances for regularisation.

Even legal status, if it remains precarious, does not end vulnerability. Regularised migrants needing a job to prolong their status are willing to tolerate any conditions. Work permits tied to one employer make workers dependent on that employer. Social organisations trying to assist these workers are facing a serious dilemma: to accept rights abuses or risk the migrant losing his/her status? If the authorities have not yet realised this, unions and social organisations are raising serious concerns about the current work permit system.

Migrants and asylum seekers behind bars⁴

Since the end of the nineties, detention has been broadly used by Belgian authorities to prevent illegal entry or to implement orders of removal. Several categories of foreigners may be subject to detention: those who are turned back at (air)ports, apply for asylum in transit zones or are staying illegally in Belgium. Some asylum seekers also risk being locked up, namely, applicants that Belgium wants to transfer to another European country or whose application is considered 'abusive'.

In 2007, 7,506 foreigners were detained in 5 detention centres, less than in previous years when the number rose above 8,000. This fall may be due to a rise in the average duration of detention: from 26.9 days in 2006 to 29.4 in 2007 (Office des Etrangers, 2008, pp.116–119). The maximum legal detention in Belgium is five months. However, every time a foreigner opposes removal, the detention order is considered anew, lengthening the detention period.

More asylum seekers in detention

In 2006, new legislation extended the scope of detention for asylum seekers. As a result, more people in search of international protection have been detained. In 2007 and 2008, around 1,600 asylum seekers were detained; in 2004, this figure was less than 1,200⁵.

Specifically targeted for detention are asylum applicants to be transferred to another EU country under the Dublin II Regulation, which aims to determine the State responsible for the examination of an asylum application (European Council, 2003). Since June 2007, an asylum applicant may be detained, not only after the requested State has agreed to take him/her back, but also from the date of the application if Belgium intends to request another State to declare itself responsible for the examination. Detention in such cases can be lengthy: often over two months. In 2008, 921 persons were detained under the 'Dublin scheme' and 1,019 decisions taken to transfer asylum applicants to other Member States.

One of the 'Dublin countries' to which Belgium removes a lot of asylum applicants is Greece. These asylum seekers are usually Iraqis and Afghans who enter the EU after crossing the Aegean Sea from Turkey. In Greece, asylum seekers encounter many problems: detention and ill treatment by the police, no access to decent reception facilities, and slow and unfair asylum procedures. This situation was highlighted by NGOs and, in February 2009, by the Council of the Europe Commissioner for Human Rights. In 2008, the United Nations High Commissioner for Refugees (UNHCR) publicly asked EU Member States not to send asylum applicants back to Greece (UNHCR, 2008). However, Belgium continues to detain asylum applicants to be transferred to Greece and has even re-established identity control at Brussels airport on the flights from Athens in order to lock up potential asylum seekers who passed through Greece as quickly as possible.

Detention of minors

Since the introduction of strict limitations on the detention of unaccompanied minors in 2007⁶, the detention of families with children has changed drastically. In 2007, 188 families with 398 children were detained; in 2008, these figures dropped to 137 families with 270 children (Office des Etrangers, 2008, p.119; Centre pour l'égalité des chances et la lutte contre le racisme, 2009, p.131). The main reason for this was the launch in October 2008 of an alternative scheme run by the Federal Immigration Service. Under this scheme, families that Belgium intends to remove due to their irregular stay or their transfer to another 'Dublin country' are not detained

(CBAR). Reports of these meetings are available at: www.cbar-bchv.be/reunions.htm. For 2004, the figures come from a report published in 2006 by several NGOs visiting detention centres: Centres fermés pour étrangers: Etat des lieux, p.13, Brussels, available at <www.jrsbelgium.org/images/stories/docs/french/etat-des-lieux-centres-fermes.pdf>.

6 Before June 2007, unaccompanied minors were detained to prevent their irregular entry into Belgium. They are now hosted in 'Observation and Orientation Centres', except those whose minority is disputed by the authorities and who may be detained while their age is determined (maximum six days).

in the first instance, but are placed in 'return houses' where they retain (conditional) freedom of movement. Such families are assigned a coach whose job is to motivate them to abide by the removal order and to facilitate their removal. It is too early to assess the operation of this new model, although NGOs fear that it may fail due to lack of trust between the family and the coach, because the coach is not independent and as the only option is 'removal'. However, this scheme is a significant improvement on detention, which has a strong negative impact on the mental health of children. Unfortunately, families who apply for asylum at Brussels airport do not fall within the scheme and remain in detention.

Detention conditions and regulations

The administrative detention of foreigners is regulated by the Royal Decree of 2 August 2002, which defines detainees' rights and obligations. On 10 December 2008, the Council of State cancelled some provisions related to visits by family, access to information and isolation in case of suicide risk. Interestingly, the Council of State noted that, in many respects, administratively detained foreigners have fewer rights than mainstream prisoners. Moreover, the Council of State has stipulated that it is not admissible that the centres where foreigners prevented from entering Belgium are detained awaiting return, the so-called INAD ('inadmissible') centres, are excluded from the scope of the Royal Decree, and stipulated that they should receive their specific regulation (Conseil d'Etat, 2008).

Some aspects of detention conditions are very harsh, namely, the lack of privacy linked to the obligation to live in a group, the strict timetable, and also the disciplinary regime (punishments, day-long isolation). NGOs have noted the disproportionate use of restraint by detention centre staff to control aggressive detainees. Particularly worrying is the injection of sedatives without consent. Detainees can complain, but the efficacy and transparency of the complaint system have been judged insufficient by the Centre pour l'égalité des chances et la lutte contre le racisme (2008).

Between September 2007 and November 2008, four deaths occurred in detention centres in Belgium, among them two suicides; between 2001 and 2006, there was only one. This sharp increase raises questions about the detention conditions and the appropriateness of medical care in detention centres.

Legal assistance in detention

Although the Royal Decree gives foreigners in detention the right to free legal assistance, many obstacles prevent detainees from effectively exercising this right. Such obstacles include lack of timely and adequate information about rights, procedures and appeals; problems communicating with

(continued on page 78)

3 In July, after political reorganisation a new Minister of Immigration was assigned and the government announced a regularisation campaign which is to take place between 15 September and 15 December 2009.

4 Written in May 2009 by Christophe Renders, JRS.

5 These figures are not official. For 2007 and 2008, they were compiled from information given by the Federal Immigration Service (Office des Etrangers) during meetings organised by the Comité Belge d'Aide aux Réfugiés

Migration: The Case of Bosnia Herzegovina

The unique state structure of Bosnia Herzegovina and the novelty of its migration policy pose challenges for the implementation of its legal framework for migration.

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Bosnia Herzegovina's unique institutional structure

Bosnia Herzegovina (BiH) has a unique state structure. It is the only federation in which one of the federal units is also set up as a federation. This bears on its institutional structure, and its policy and legislative functioning. Migration is a rather new policy and legislative area for the country. To understand migration issues in BiH, a short description of the country's institutional structure is useful.

The current state structure of Bosnia Herzegovina is the result of the General Agreement for Peace in Bosnia and Herzegovina (known as the Dayton Agreement), signed on 14 December 1995, which ended four years of war (1992 to 1995). BiH consists of a state (national) level, two entities – the Federation of Bosnia Herzegovina (FBiH) and Republic of Srpska (RS) – and the Brcko District, created in 1999. The country is based on a rigid system of national-ethnic political representation that provides full citizenship rights and powers to three constituent peoples (Bosniacs, Croats and Serbs) and limited citizenship rights to a fourth group called *ostali* (others)¹. Each of the BiH levels has its own structure and government. The state level has a presidency (tripartite presidency), a bicameral parliament (Parliamentary Assembly of BiH and House of People), and a Government with its Council of Ministers (a total of nine ministries). The Federation of BiH has three distinct levels of administration: the entity government, cantons (10) and municipalities (79). RS consists of two administrative and political levels: the entity government and municipalities (62).

The constant battle between the national state government and the two entity levels regarding attribution of competences locks BiH. Two opposite visions of statehood are held by each of the state entities: one of a strong and centralised state and the other of a highly decentralised state (almost a federation of states) with the concentration of power at the entity level. These two visions result in delayed or halted implementation of policies; entity officers

¹ According to the BiH Constitution, only citizens belonging to the constituent population are eligible to run for president of BiH or RS.

employ a veto strategy as a tool in negotiations on the assignment of power and responsibility. The result is a country that struggles to find agreement on policy and implementation and in which each part acts independently and sometimes contradictorily.

Lack of statistical data

The overarching problem in relation to statistical data is that the last census was conducted in 1991, before the war. Due to the structural fragmentation of BiH and the several levels and centres of powers, data is not always available and collected in a standardised way. Data and information is collected at several levels, but is not shared. The Agency for Statistics is not able to provide data on the number of foreigners living in BiH or on migration flows. However, in a more positive step, from April 2009, the State Agency for Work and Employment has agreed to include among its labour market indicators a table on the number of work permits granted to foreign nationals. Unfortunately, the absence of disaggregated gender data does not allow for any analysis in relation to foreign women.

Even though a centralised Information Management System has been established for the purpose of migration monitoring, as at July 2008 it was still not working at full capacity (Ministry of Security & IOM, 2008).

Migration law in BiH

According to the BiH Constitution², the state is responsible for migration, visa and asylum affairs. Competences are divided among three ministries: the Ministry of Security, Ministry of Foreign Affairs, and Ministry of Human Rights and Refugees³. The lead institution is the Ministry of Security with its organisational unit; while competences over vital sectors like health, employment and education belong to the FBiH and RS.

Since April 2008, BiH has had a new umbrella

² BiH Constitution, Article 3, para 1, line (f): Policy and regulation of immigration affairs, refugees and asylum.

³ It is important to remember that the major movement of people in BiH was generated by the war (March 1992 to November 1995); more than 2.2 million people reportedly left their homes. For a country of 4.4 million inhabitants this meant a movement of almost 50 per cent of the population. According to the latest data provided by UNHCR, from 1996 to the end of 2008, 1,026,692 people were returned, but only 467,297 to their place of origin. BiH still has approximately 124,529 displaced persons: 55,894 in the FBiH, 67,523 in the RS and 1,112 in Brcko District (UNHCR, 2008).

Law on the Movement and Stay of Aliens and Asylum (LMSAA), which can be regarded as a major accomplishment towards migration policy development. This law offers a framework for the development of future legislation and for realising harmonisation between laws and competences in the fragmented political and legislative scenario.

Illegal migration

It was just after the war that BiH institutions started to build the infrastructure necessary to secure and monitor borders and migrations flow. Prior to this, BiH had no experience in border management, being part of the former Yugoslavia and with no external borders. The BiH Border Police (BP) manage passenger movement through all official border crossing points. It is difficult to control the flow of migration in and out of BiH. Only 14 out of the 55 international border crossings have some technology to support the registration of passages, which together with the geographical nature of the country made it possible last year for 432 (identified) illegal crossings into BiH from Montenegro and Serbia. Readmission data shows that the border with Croatia is used to exit BiH to reach Western Europe, while the borders with Montenegro and Serbia are used to enter BiH for transit migration and other illegal activities. Data for 2007 shows that a total of 34,203 people entered BiH, and 3,120 failed to exit, which can be considered an indirect indication that BiH is being used as a transit country for the irregular migration of citizens belonging to Serbia, Montenegro, Kosovo, Albania and Croatia.

A unique case: 'In-country' illegal migrants

BiH is not a country with a high influx of refugees; registered flows are mainly related to the Balkan wars (the conflict in Croatia from 1991 to 1995, and the NATO intervention in 1999 in the Federal Republic of Yugoslavia). Figures show 7,257 refugees from Croatia, who nearly all live in RS (7,037), and 170 refugees from Serbia/Kosovo, who all live in FBiH (UNHCR, 2008).

When it comes to asylum seekers, the majority of cases are 'in-country' situations. Once more, there are links to the Balkan wars in the 1990s. In 2007, due to a change in legislation, two groups found themselves in the position of seeking asylum: the first group are people originally coming from Serbia/Kosovo who had the status of refugees; the other group are BiH naturalised citizens, originally from Africa and Asian countries, who arrived in BiH during

the war to defend the Bosnian-Muslim population. Called *mujahedin*, these Islamic combatants came to BiH during the war as volunteers and were rewarded for their services with citizenship of the Federation of BiH. Although the Dayton Agreement stipulates that “all foreign military instructors and volunteers had to leave Bosnia”, many remained and married (Azinovic, 2007). After 9/11, however, things started to change. The issue culminated with the amendment of the Law on Citizenship in 2006, when the Citizens Review Commission examined 1,200 citizenships awarded during the war and immediately after and found irregularities in 612 cases. In some cases, citizenship was obtained under a false name. Recently, there have been accusations that this group of naturalised citizen’s human rights have been violated. What is certainly true is that this sensitive issue has been used to polarise public opinion.

Economic migration

Given that any data related to population is an estimate based on the census of 1991, data provided by World Bank estimates that the immigrant population in BiH is equal to 1 per cent (40,000) of the actual population. According to the recently established Service for Foreigners’ Affairs (SFA), the sole immigration authority for BiH, during 2007 there were more than 2,980 requests for temporary residence (based on marriage to a BiH national, work permit or family reunification) and 3,226 applications for extension of temporary permits.

The new LMSAA says that foreign residents who have a temporary (up to one-year) or permanent permit to stay are equal to BiH nationals in regards to labour rights. All other rights as described in the Council Directive 2003/109/EC in relation to education, health, social security and so forth are within the competence of the entities. This means that these rights are not guaranteed, and there is a need for the coordination and harmonisation of entity regulations with the LMSAA in each of these sectors. At present, foreign residents do not participate in political life in BiH at any of the administrative levels (municipalities/entities or state).

The largest number of residence permits in BiH are issued to citizens from neighbouring countries (Serbia, Montenegro, Croatia, Macedonia), and the second largest number to citizens of Turkey and China. For Chinese citizens, BiH is regarded as a final destination; the majority of Chinese migrants are entrepreneurs involved in small shops and catering. The last relevant group is composed of nationals of EU countries, employed in private and not-for-profit sectors, as well as in the various international bodies and diplomatic institutions. As citizens of EU countries are entitled to visa-free entry, it is impossible to verify their actual number.

Brain drain and remittances

Regarding the emigration of BiH citizens, there is little (and inadequate) data available. Top destina-

tions for BiH emigrants are Croatia, Germany, Austria and the USA. According to third-country information, in the EU alone there are 300,000 BiH citizens.

The first outflow of highly qualified migrants from BiH was generated by the war. With the country severely damaged, low incomes and the lack of a national strategy on education and private sector issues, highly qualified workers looked for solutions abroad. The United Nations Development Programme (UNDP) estimates that more than 92,000 young people left BiH between 1996 and 2001. According to a report done by the Commission for Coordination of Youth Issues in BiH, in 2007, more 57 per cent of youth would leave the country if offered an opportunity; this data correlates with the youth unemployment estimate, which is 58.2 per cent (Commission for Coordination of Youth Issues in BiH, 2007). In any case, it is not possible to estimate migration balances due to the lack of baseline information. In BiH, it is possible to be registered as unemployed, while working abroad, due to the poor or lack of centralised data on diaspora.

According to information provided by the World Bank (2007), BiH remittances peaked in 2007 when the country was among the top ten remittance countries in Europe and Asia and among the top five when considering remittances as a proportion of GDP. Remittances were approximately USD 19 billion, equal to 17.2 per cent of GDP, a trend that continued in 2008 (USAID, 2008). This calculation only takes into account remittances through official bank channels. According to global estimates, unofficial remittances are likely to be another 50 per cent on top of this.

The global economic crisis is expected to impact on BiH citizens through reduced remittances. Unfortunately the governments of BiH do not seem interested or able to develop policies to diminish the impact of the expected reduction in remittances, or to support employment and economic development. This is illustrated by the stand-by arrangement signed with the International Monetary Fund (IMF) under which a flat 10 per cent cut in public expenses, in each sector and per category, was the only policy measure adopted. This highly unpopular measure was justified as a condition imposed by the IMF; citizens were not informed of the details of the agreement with the IMF and were expected to passively accept it. The latest developments show that not all sectors and categories (workers, public administration) are being treated equally; politicians are protecting their privileges and salaries while imposing the cost cuts on the most vulnerable categories. ■

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The Impact of the Financial Crisis on Bulgarian Migrants

Being a net exporter of people, Bulgaria shapes its migration policies to reduce emigration flows and stimulate the return of Bulgarian nationals to improve the demographic balance and increase labour supply.

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Historical background

The final decade of the Twentieth Century witnessed the largest economic experiment of recent times as former communist countries implemented economic reforms designed to expedite their transformation into market-based economies. The transformation process has influenced the direction of economic policies and shaped social policies, business practices and institutions. The collapse of the central planning system in Europe also provided the citizens of these communist regimes with greater opportunities to migrate abroad. The first post-communist emigration wave from Bulgaria started soon after the liberalisation of State passport regulations and the abolition of the exit visa requirements in 1989. Nearly one-quarter of a million Bulgarians left the country in this particular year. They were mainly comprised of Bulgarians of Turkish descent whose departure was more motivated by political rather than economic considerations. It was not until the mid-1990s that the pattern of Bulgarian emigration flows could be characterised as primarily driven by economic factors. In this early period, Bulgarian emigration was mainly directed towards Central European destinations, notably the Czech Republic, Hungary and Austria.

The economic circumstances influencing migration flows since the 1990s can be divided into three periods. The first period (1990–2000) is characterised by the start of the transition and the economic downturn resulting from a number of radical economic and social reforms (e.g., the liberalisation of prices and trade conditions; privatisation and mass layoffs; liquidation of existing cooperatives in the agricultural sector, which caused high rural unemployment). During this period, the lack of jobs and poverty stimulated emigration. According to some sources, the number of immigrants in the period from 1989 to 2000 amounted to 691 thousand people (BAS & UNPF, 2005, p.71).

The second period (2000–2007) is characterised by an improvement in the economic and social environment, and an increase in job opportunities and income levels. These factors contributed to a decrease in emigration flows and an increase in immigration. After 2002, the emigration flow stabilised at a level of about seven per cent of the

population (UNPF, 2007, p.86). However, the country remained relatively poor – GDP per capita was 33.9 per cent of the Western European level from 2000 to 2002¹. Poor living standards, compared with the EU-25, made Bulgaria less attractive to immigrants and turned it mostly into a ‘transit’ country on the way to Western Europe.

The third period of Bulgaria’s economic development starts in 2007, when the country became a member of the EU. Its new status as a member of the European Union changed the structure of Bulgarian emigration to Western Europe, while also increasing the attractiveness of the country to immigrants.

Migration flows: Quantitative and qualitative dimensions

As pointed out above, Bulgaria is a net exporter of people, as the number of emigrants significantly exceeds that of immigrants and refugees. Moreover, Bulgaria’s population is decreasing. In 1989, the country had a population of 8,987,000, whereas in 2009 the population had dropped to just 7,204,687. This reduction is the result of both the negative balance of births and deaths, and more emigration than immigration.

Large waves of emigration have become a serious problem for Bulgaria due to its negative impact on population growth and the present labour shortage resulting from the country’s economic revival. After 2002, the emigration wave involved some 90,000 people per year. However, according to some projections, the emigration flow should decrease and stabilise at about 6,000 to 8,000 people per year after 2010. This decrease might reflect what is referred to as ‘emigration exhaustion’ in the country.

A number of studies show that emigration readiness is not high among young people. The structure of the emigration flows can be traced for the period from 2002 to 2008. The level of highly qualified emigrants has dropped from 17 per cent to 9 per cent, but the number of low-qualified workers has increased. According to a 2001 census, potential long-term emigrants mainly consisted of educated young people, including women of fertile age; while low-qualified people mostly declared an intention to emigrate only for short-term, seasonal labour. In recent years, there has been a growing tendency towards temporary seasonal, rather than permanent

migration, with the preferred destinations being Greece, Italy, the Netherlands, Germany and Spain. The intention to emigrate for short-term mobility has increased from 26 per cent in 2001 to 42.4 per cent in 2007 (National Representative Survey, 2007, p.87). The main motives underpinning this trend are interpreted to be primarily of economic nature. The rise in temporary or circular and repeated economic migration, which is predominantly undocumented, is attributed to increased unemployment in certain regions of Bulgaria. The opportunity to stay in the Schengen states for three months without a visa provides an additional incentive². It is believed that many Bulgarians exploit this opportunity to undertake illegal employment in Europe, while residing there legally for three months.

Immigrants in Bulgaria: Young and highly educated

Immigration flows are insignificant compared to emigration flows. The total number of immigrants, according to the last census, was 18,688 in 2001. The statistics on permanently resident foreigners outline an increase to 55,653 in 2006. In the same year, 77 per cent of immigrants came from Europe, 19 per cent from Asia, 2 per cent from America, 1 per cent from Africa and 1 per cent were stateless. The countries of origin of European immigrants included mainly Turkey, the Russian Federation, Ukraine, the Republic of Macedonia and Moldova (85.2% of all European immigrants). People from China and Armenia predominated the flow from Asia (Council of Ministers, 2008).

It is important to underline that immigrants are not a homogeneous group. They include permanent residents, people with long-term stay (16%), people granted humanitarian status or refugee status (11%), people with double citizenship or who are stateless (6%), and short-term residents (4%). Most immigrants to Bulgaria are relatively young: 30 per cent are in the age group between 18 and 30 years, while 26 per cent are aged between 31 and 40 years. Immigrants are relatively well educated: 21 per cent have higher education and 56 per cent of the employed immigrants have their own trade business or are employees in joint venture companies or international companies active in Bulgaria. Thirty-eight per cent of immigrants to Bulgaria are engaged in low-qualified occupations. An interesting question is

¹ According to UNICEF Trans Monce Database and National Statistical Office.

² Bulgaria was removed from the ‘black Schengen list’ in April 2001, which means that Bulgarian citizens can travel freely within the Schengen area for three months.

the extent to which immigrants are involved in illegal activities and the 'grey economy'. The cited survey does not confirm the widespread opinion that immigrants are strongly involved in this sector (UNFPA et al., 2007).

Migration policy: Limiting emigration and attracting Bulgarian nationals

The Bulgarian migration policy is based on international commitments and agreements in the field. It follows the generally acknowledged principles regarding migrants and focuses particularly on emigration. The Government is currently undertaking steps to develop a consistent policy in the field of migration, including the development of strategic documents and action plans related to emigration and immigration. These steps were motivated by widespread debate on the decreasing demographic trends and labour shortages. The aim of the policy is to reduce and stabilise emigration flows and to stimulate immigration to improve the demographic balance and increase labour supply.

Assuming that present upward immigration trends continue, the National Emigration and Immigration Strategy of the Republic of Bulgaria (May 2008) underlines the need, among other things, for intensive public debate about the socioeconomic role of immigration, to improve existing legislation to unify legal norms concerning immigration problems, and to further develop the information system for immigrants regulating procedures for recognising the education and professional qualifications of immigrants. The immigration policy is focused on ethnic Bulgarians living abroad. There are four main directions of action: (i) facilitating procedures for obtaining Bulgarian citizenship, (ii) providing scholarships for children of ethnic Bulgarian origin from other countries and who wish to stay in Bulgaria, (iii) activating and expanding spheres of cooperation with Bulgarian emigrants abroad, and (iv) elaborating a policy to attract ethnic Bulgarians to settle in Bulgaria and to encourage their entrepreneurship in Bulgaria. To complement these measures, the Bulgarian Government has implemented the so-called 'Green Card' for foreign workers, introduced in April 2008, as an instrument for attracting immigrants of Bulgarian origin by providing better conditions for economic and social integration.

Remittances and their impacts

It is widely considered that migrant remittances, defined as cash or in-kind transfers from migrants to relatives and friends in their country of origin, play a significant role in maintaining basic living standards for many households in countries of origin. Over the last decade, migrant remittances have assumed increased significance for many transitional economies. Data released by the Bulgarian National Bank confirm that the amount of money sent by Bulgarian residents abroad to relatives in their home country has, over recent years, steadily

increased, both in absolute terms and in relation to GDP. Given the existence of both informal methods of transfer and in-kind transfers, remittance flows are probably underreported. According to data released by the Agency for Bulgarians Abroad³, at least 300,000 Bulgarian migrants send amounts ranging from between USD 100 to USD 300 to their families in Bulgaria on a monthly basis. For example, in 2007 such transfers accounted for about 5 per cent of Bulgarian GDP.

The scale of these remittances raises important questions about their potential impact on Bulgaria's economy and whether or not the gain through remittances counterbalances the 'brain-drain' experienced by the country through permanent emigration. Remittances are used primarily to cover basic needs, but also to purchase durable and investment goods. A study on the effects of migrant remittances on the Bulgarian economy emphasises their increased use for the purchase of real estate. Research by the Institute for Market Economics on the real estate market showed that over the period from 2002 to 2004, about 10 per cent of real estate purchased in large Bulgarian cities was financed by migrant remittances.

There is no clear indication of how remittance flows to Bulgaria will evolve in the context of the global financial crisis. It is likely that the flows will decrease as world remittances are expected to drop by 7 per cent to 10 per cent in 2009. The tendency to use informal channels for transfers is also stronger during times, such as now, when there is a lack of trust in the banking system.

Influence of the global economic crisis on Bulgarian migration

In the past months there has been a lot of speculation regarding the potential return of short-term Bulgarian migrants due to the effects of the global economic crisis on Western economies. When the usual destination countries for Bulgarian emigrants undergo periods of recession and increased unemployment (such as Spain, which is experiencing unemployment of 17.4%), policy measures are targeted at the return of migrants through financial support. At the same time, official statistics indicate that the increase in unemployment in Bulgaria has been smaller than expected. In March 2009, the unemployment rate was approximately 7 per cent due to some measures undertaken by the Government to preserve employment levels. The Government is allocating funds to employers who are ready to keep workers on part time contracts.

Trade unions in Bulgaria also think that one of the reasons for Bulgarian migrants to return could be the possibility of receiving unemployment benefits in Bulgaria for employment periods in some other

European countries. The stigmatisation of migrant communities in economically rich countries may also be a reason for the return of short-term emigrants.

This spring, a new political party, 'The Other Bulgaria', was established in Bulgaria, claiming to represent Bulgarian emigrants. Bulgarian emigrants in Greece have started to return to Bulgaria en masse, claimed the leader of the new party, Bozhidar Tomalevski, on a working visit to Greece. He predicted that there could be a wave of up to 150,000 Bulgarians returning from Greece over the next year out of an estimated total of 360,000 Bulgarians currently living in Greece. He called on the Bulgarian Government to deal with the problem of illegal Bulgarian workers in Greece and stated that his party, which was set up by Bulgarian emigrants, would put forward new, adequate political measures to assist Bulgarian emigrants and their families.

However, there is no clear evidence to suggest that there will be a massive flow of returns. Given that the global economic crisis is also affecting Bulgaria's economy, although in a delayed manner, migrants who invested money to go to economically rich countries may prefer to stay where they are and wait for improvements. ■

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³ The Agency for Bulgarians Abroad (ABA) is a state institution tasked with collecting data about expatriate Bulgarians. It also coordinates and supports the activities of state institutions towards expatriate Bulgarians.

The Asylum System in the Republic of Croatia – Some Aspects of the Position of Asylum Seekers and Asylees under the Legislation and in Practice

Despite its low number of asylum applications, Croatia must improve the implementation of the recently adopted EU legislation. In particular, the issue of refugees' integration needs to be addressed.

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Introduction

The asylum system in the Republic of Croatia (RoC) started to develop more intensively from 2003. Today, after significant effort, Croatia's asylum legislation generally complies with international standards and the European Union *acquis* on asylum. The asylum system is now in place in Croatia, even though Croatia is still not a destination country for asylum seekers. The number of asylum applications each year, as well as the number of asylees² and persons under subsidiary protection³, is still low. Although the asylum system is rather new and the new Law on Asylum (LoA) has only been in place since 2008, several shortcomings have come to light. In the future development of the asylum system in Croatia, emphasis should be placed on the integration of asylees into Croatian society and on Croatia's policy in relation to asylees.

The development of the asylum system

The first LoA in the Republic of Croatia was adopted in 2003 and entered into force on 1 July 2004. Prior to that, the legal basis for 'refugee' status was provided by a few provisions in the Act on Movement and Stay of Aliens. Following the EU accession process, a

new LoA entered into the force on 1 January 2008, which is generally aligned with the EU *acquis* on asylum. The main authority responsible for asylum and migration issues in the RoC is the Ministry of Interior (Mol)⁴.

According to Mol statistics, since 2003, there have been 864 asylum applications in the RoC; only 4–7 of these were granted asylee status (for 13 persons) and, since the new LoA entered into force, another 4 persons were granted subsidiary protection in 2008/09. In the past, there were no exact figures on how many persons who expressed their intention to apply for asylum were rejected at Croatia's borders and returned to their countries of origin, and there was no information on whether or not all who express their intention to apply for asylum had the opportunity to actually lodge an asylum application. Hence, it was considered necessary⁵ to closely monitor actual practices in the RoC with regard to illegal migrants and asylum seekers.

There have been some important achievements in the development of the asylum system in the RoC. The EU integration process was the driving force for Croatia to conform with the EU *acquis* on asylum and border management. However, legislation adopted for EU accession must be implemented properly and balanced with other international obligations in relation to refugees. While the new LoA is a step forward, a number of issues need to be addressed before Croatia's asylum legislation is in line with EU and international standards; in particular, (i) the penalisation and detention of asylum seekers, (ii) the violation of the rights of asylum seekers and asylees and (iii) issues with the rights of asylees and their

integration⁶. Each of these will be discussed in turn in the following sections.

Penalisation and detention of asylum seekers

Since the first LoA came into force in July 2004, until the implementation of the border monitoring project in March 2009, a misdemeanour procedure was conducted against almost all foreigners found to have illegally crossed the border or who were illegally residing within Croatian territory, which usually included asylum seekers as well, although the LoA⁷ prescribes that asylum seekers shall not be punished for illegal entry⁸.

There was no unique practice in regard to the accommodation of those asylum seekers who were caught crossing the border illegally. Under the LoA, asylum seekers should be accommodated in the Reception Centre for Asylum Seekers in Kutina, which is an open camp in which asylum seekers have freedom of movement. However, contrary to the provisions of the LoA, which precisely prescribes in which cases and under which circumstances asylum seekers can be detained and their freedom of movement restricted, the majority of asylum seekers caught illegally crossing the border or who were illegally residing within Croatian territory were detained along with other illegal migrants in the Aliens Reception Centre in Jeevo based on the Law on Foreigners (LoF). According to the LoF, they can be held in this Centre for up to 180 days, which can be prolonged for another 180 days, although the LoA stipulates that the movement of asylum seekers can be restricted for a period of up to 3 months, and,

6 These issues were identified based on data collected through cooperation with the Mol and the direct work of the CLC with asylum seekers and asylees in the RoC via the provision of free legal assistance to those categories of persons.

7 Article 21 of the LoA prescribes that an alien who illegally enters the Republic of Croatia, coming directly from a territory where his/her life or freedom has been threatened shall not be punished for illegal entry or stay if he/she submits an asylum application without delay and if he/she presents valid reasons for his/her illegal entry or stay.

8 According to the new Law on Foreigners (LoF), in cases of illegal residence and illegal border crossing, the Mol is the competent authority to decide on deportation, without conducting a misdemeanour procedure.

1 The Croatian Law Centre (CLC) is a non-governmental organisation founded in 1994 with the main goal to establish and promote rule of law in Croatia. Since 2003, the CLC has been, through various projects, actively involved in the development of the asylum system.

2 Under the Law on Asylum (LoA), an 'asylum seeker' is an alien who has applied for asylum regarding which a final decision has not yet been made and an 'asylee' is an alien who has been granted asylum under the LoA. 'Asylee' was used in the LoA to distinguish between 'refugees', which is a term used to describe refugees from the war in ex Yugoslavia in the 1990s.

3 Under the LoA, 'subsidiary protection' is the protection granted to an alien who does not fulfil conditions for asylum, but for whom there exists a justified belief that he/she would be, if returning to his/her country of origin, exposed to the risk of suffering serious harm, and who is not able, or due to this risk is unwilling, to avail himself/herself of the protection of that country.

4 The Mol is the competent authority for deciding upon asylum applications. An appeal against the Ministry's decision can be lodged with the Commission for Asylum, and a lawsuit against the Commission's decision can be initiated before the Administrative Court of the RoC.

5 In order to monitor access to the asylum procedure, the CLC obtained funding under the Matra Programme of the Netherlands Ministry of Foreign Affairs, in cooperation with the Dutch Refugee Council, and supported by United Nations High Commission for Refugees (UNHCR). The project is carried out in cooperation with the Mol. The monitoring of border police interviews with intercepted irregular migrants began on 1 March 2009.

for justified reasons, may be extended for another month. This detention is a clear violation of their right to freedom of movement.

Asylum seekers' rights

According to the LoA, asylum seekers are entitled to residence in the RoC, provision of basic living and accommodation facilities, health care, elementary and secondary education, financial support, free legal aid, humanitarian aid, the right to work, and freedom of religion and religious upbringing of their children. However, issues have arisen in relation to access to education. Although the LoA prescribes that asylum seekers are entitled to elementary and secondary education under the same conditions as Croatian nationals and that this right should be made available within three months from the day of submission of the asylum application (or within one year in the case where the asylum seeker is not familiar with the Croatian language), there have been some problems in practice. Due to the lack of a programme for learning the Croatian language, different approaches and standards are applied to a minor asylum seeker of school age: those who are from neighbouring countries and speak a language similar to Croatian are sent to school, but this is not the case where the asylum seeker speaks an entirely different language. The problem has arisen because the ministry responsible for education failed to pass the programme for learning the Croatian language, history and culture for asylum seekers and asylees within 120 days from the day that the LoA entered into force. In practice, the MoI is dealing with this problem on a case-by-case basis, but other competent ministries, such as the Ministry of Education, are not fulfilling their obligations prescribed by law.

Rights of asylees and persons under subsidiary protection and their integration

According to the LoA, asylees and persons under subsidiary protection are entitled to residence in the RoC, accommodation, work, health care, education, freedom of religion and religious upbringing of children, free legal aid, social welfare and family reunification. In addition, asylees are entitled to assistance in inclusion into Croatian social life, i.e., to integration. Issues have arisen in relation to both accommodation and integration. The Ordinance on the accommodation of asylum seekers, asylees, aliens under subsidiary protection and aliens under temporary protection provides that asylees who are unable to find accommodation shall be provided with accommodation in the accommodation facilities which the RoC has at its disposal for that purpose within thirty days from when the granting of asylum becomes final. Such accommodation includes residence in an appropriate accommodation unit where basic hygienic needs can be met and that allows for the independent preparation of food. However, in practice, once a person is granted the status of asylee, he/she can be accommodated in the

Reception Centre for Asylum Seekers for months.

There are currently only thirteen asylees in Croatia. But even with such a small number, the system is not functioning due to insufficient budget funds. Furthermore, asylees and persons under subsidiary protection who are accommodated in the Reception Centre for Asylum Seekers are not entitled to financial support.

Integration is also lacking support from the authorities that are supposed to be involved in the process. According to the LoA, the competent ministries shall ensure conditions for the inclusion of asylees into the cultural, economic and social life in Croatia. In that process, special attention shall be paid to the organisation of Croatian language courses; other courses, seminars and education and professional training; and the provision of information about Croatian history, culture and state organisation. However, to date, language courses have not been provided to asylees on time. This inhibits them from integrating into society. Lack of language skills can also prevent them from finding employment and financially supporting themselves. Furthermore, persons under subsidiary protection are not entitled to language courses and other benefits of the integration process.

Conclusion and recommendations

Although the issues outlined above can be attributed to the asylum system being relatively new and untested, there is certainly a need for a review of the current system to:

- Change the practices regarding the detention of asylum seekers
- Implement hearings before the Administrative Court with the aim to determine the facts
- Further strengthen the legislation and institutions in terms of the integration of asylees
- Improve cooperation among competent ministries with regard to asylum seekers' and asylees' rights

Croatia has not yet fully adopted policies and procedures to cope with the transition from being a transit country to a refugee receiving country. In this regard, any legislative or practical shortcoming that prevents people in need of protection from applying for asylum will continue to force their movement toward the EU.

On accession to the EU, Croatian borders will become the external borders of the EU; it is expected that Croatia will change from a transit country to a destination country for asylum seekers and that the number of asylum seekers, as well as the persons granted protection will increase.

In an effort to further develop asylum policies and strengthen the refugee capacities and institutions in the RoC, the following recommendations are made:

1. The asylum procedures should follow the national

legislation and should be in full accordance with international refugee and human rights frameworks.

2. In practice, asylum procedures should be improved through education and awareness raising about asylum issues for state authorities, international organisations and NGOs.
3. Constructive cooperation between all the relevant actors, including state authorities, ombudsmen, international organisations and NGOs, should be strengthened to facilitate increased transparency and the quality of procedures in general. ■

Immigration and Intercultural Education

The increase in immigration in Cyprus raises new integration issues. An intercultural education system would help in establishing social cohesion and peace.

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The island of Cyprus has historically been characterised by diversity and multiculturalism. During the late 1990s, Cyprus rapidly shifted from a state experiencing emigration, to an immigrant recipient country. International developments in the economic and political arena have significantly affected the policies of Cyprus on migration. The collapse of the Soviet Bloc, the escalating globalisation of the neo-liberal model, Cyprus's accession to the EU and domestic economic progress in certain sectors (e.g., tourism and construction) led Cyprus to reconsider its restrictive approach to immigration. The vast majority of immigrants come to the island as low-skilled and service oriented workers, attracted by the needs of the domestic labour market (Trimikliniotis, 2008). Cyprus's sudden shift to an immigrant host country caught the Government of Cyprus and the society unprepared for the socioeconomic challenges and opportunities that immigrants have brought to the island (Mainwaring, 2008). As a result, immigrants are facing racism, xenophobia, political and civic exclusion, and marginalisation.

It is currently estimated that 160,000 third country migrants and 60,000 EU citizens live in Cyprus (Trimikliniotis, 2008). Immigrants are often depicted as a 'burden' on the social and economic sectors of the country. An example is the discourse used by the media and police when identifying undocumented immigrants. They call such processes 'operation broom', implying that the police are 'cleaning' the island. Such perceptions and practices are a reflection of the overall political and legal immigration framework. Immigrants' residence in Cyprus is characterised by transition, uncertainty and, in most cases, temporality. Immigrants are often exploited by employers as they can only stay in the country if they are working or studying at a local university or college. In recent years, policies directed towards immigrants have been established; however, most of these are legalistic and regulatory in nature, ignoring the social issues (Triandafyllidou & Gropas, 2007, pp. 45, 57).

In relation to education, migration leads to an increase in diversity in schools. This transformation has created new challenges for the education system in Cyprus and has had a major impact on the

work of teachers. One of the major fields in which the successful or unsuccessful inclusion of immigrants is tested in Cyprus is the education system.

Education and immigrants in Cyprus

Following the division of the island in 1974, the process of homogenisation within each of the two major communities in Cyprus (i.e., the Greek Cypriots and Turkish Cypriots) has intensified for political reasons. This has been the basis for the development of a monocultural education system within the education system of the Greek Cypriots and Turkish Cypriots (Zembylas, in press). Of the current inhabitants, 13.7 per cent are non-Cypriots (Statistical Service of the Republic of Cyprus, 2006). The changing profile of the population in Cyprus has affected the schools and the education system. In the 1995/96 school year, the percentage of non-indigenous students was 4.41 per cent; in 2007/08 this percentage rose to 7.7 per cent (Ministry of Education and Culture, 2007a & 2007b). There are now some Cypriot schools where non-indigenous students constitute a significant majority (80 to 90%).

Although Cyprus offers free education to all of its residents, including migrants' children, it has a very poor record for an intercultural approach in its curriculum and education system (Zembylas, in press). Many migrant children also face exclusion and marginalisation due to the status of their parents (Trimikliniotis & Demetriou, 2007). For example, there have been cases where schools have requested to see the parent's 'residence permit' before enrolling a child. Although the issue was resolved by the Attorney General and a circular sent to all teachers, there is still confusion and uncertainty about the rights of migrant children. Therefore, 'equal opportunities for all children' remains an unfulfilled goal in Cyprus. In light of experiences in other European countries that show that second-generation immigrants are more likely to feel alienated within the host country's society (Gregg, 2006), it is important to pay attention to those policies that will make inclusion successful for these vulnerable groups. Research shows that second generation immigrants demonstrate lower performance in school than first generation (EC, 2008). Hence, it is crucial that children of immigrants are given the opportunity to effectively participate in education and society.

Intercultural education is relatively new to Cypriot schools. According to Zembylas and Iasonos (in press), the first serious attempt to address

the issue took place in 2002 when the Ministry of Education and Culture sent a circular to public schools (titled Intercultural Education). This circular attempted to present the Government's policy on intercultural education. The issues on which the policy focused included the provision of measures for language support (e.g., the teaching of Greek as a second language to non-indigenous students) and the provision of measures to facilitate the smooth integration of non-indigenous students into the Greek-Cypriot education system and society. These language provisions – which are still in place – do not seem sufficient to equally serve all students regardless of ethnicity, origin and religion (Zembylas, in press). However, it is important to acknowledge that there are a few 'multicultural' schools that manage to demonstrate remarkable results in terms of the successful inclusion of immigrant students (Demetriou, 2009).

In 2004, a Commission for Educational Reform (2004) was appointed by the Government to oversee the process of developing and implementing education reform in public schools. This Commission expressed concern about the narrowly ethnocentric and culturally monolithic Cypriot education system, which did not account for intercultural education. According to Zembylas and Iasonos (in press), the measures and policies suggested and implemented by the Ministry were considered inadequate by the Commission because they primarily targeted non-indigenous students and their Greek 'language deficiency', while neglecting wider issues of nationalism, racism and intolerance. The European Commission against Racism and Intolerance (ECRI, 2006) emphasised the lack of thorough understanding of, and genuine sensitivity to, human rights by many teachers. Research conducted in Cyprus demonstrated that the policies enforced both at the philosophical and practical level are mostly grounded in the notion of assimilation rather than integration, and that the education system views the diversity of non-indigenous children as a deficiency that needs to be treated quickly so that these children can be assimilated (Angelides et al., 2004; Panayiotopoulos & Nicolaidou, 2007; Zembylas, in Press).

The model of intercultural education currently being implemented in Cyprus elementary schools is a mainstreaming programme in which language learners attend classes with indigenous Greek-speaking children. Following the example of the French Zones Educatif Priorité, a number of public schools in Cyprus have become part of a Zone of

Educational Priority (ZEP). ZEP networks have schools with high numbers of non-indigenous students, but not all such schools are included; there are a number of schools in Cyprus with high numbers of non-indigenous students that are not in a ZEP network. ZEP schools receive additional help, such as extra hours for assisting non-indigenous students to learn the language. However, the role of ZEP schools is not just to provide language support; they also promote multiculturalism and foster closer links between schools and the community. In addition, the Pedagogical Institute of Cyprus organises in-service training for teachers in intercultural education, but attendance is voluntary and during teachers' free time.

The successful inclusion of immigrant children in the education system can also empower immigrant parents (NESSE, 2008). In Cyprus, parents associations are vital decision-making and lobbying bodies that influence policies. The participation of immigrant parents in such associations will potentially alter the status of immigrant parents and transform them into active participants in political and civil society.

The majority of immigrants arrive in Cyprus without their families. The education system must adjust to this reality. The Ministry of Education and some NGOs are offering evening courses for adult immigrants. However, these evening courses are not free and mostly focus on learning the Greek language together with some vocational training (Demetriou, 2009). These courses are inadequate to meet the goal of an inclusive multicultural society.

Conclusion

Increased immigration to a country provides new challenges, and the education system has an important role to play in meeting these challenges. Intercultural education is a vital medium for social cohesion and peace in an era during which Cyprus has become a popular destination for immigrants, refugees and asylum seekers. The Government has to re-evaluate its policies on intercultural education and consider the important implications of changes on the philosophy and practices of the education system. The intercultural education strategy and policies must be holistic and cover all spheres of public life. Only when immigrants are treated as potential citizens of the state with rights will they feel included and invested in, for the common good. Cyprus's unresolved political problem complicates efforts to address the alienation of immigrants in all aspects of public life, including education. Despite the challenges, Cyprus can use intercultural education as a medium to build more inclusion and social cohesion by promoting equal rights and participation for all.

One important aspect that needs to be addressed is teacher preparation programmes. Current programmes fail to prepare teachers to engage in the difficult work with migrant children, which requires a shift in values, attitudes and

practices, and limits their ability to address fundamental social justice issues. To promote intercultural education, teacher preparation programmes need to be designed so that they provide teachers with opportunities to critically reflect on their values and practices, as well as on the impact their work has on the community. Such opportunities may include participation in a field-based inquiry into racism and discrimination, shadowing successful teachers in schools where intercultural education is a primary objective, participating in workshops that analyse empirical data about racism and examine stereotypes, and facilitating the development of inclusive curricula.

The fundamental assumptions and practices of EU education systems need to be critically analysed. Governments and ministries of education need to demonstrate the strong political will needed to deal with difficult and contentious issues, such as intercultural education, and to critically examine those practices that are institutionalised in the education system that marginalise immigrant parents and their children. Convincing governments to reform exclusionary practices into a more inclusive framework is not an easy task. However, it is a task worth pursuing if one believes in social justice and education for all. ■

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Migration and the Roma Minority in the Czech Republic

The economic crisis has worsened the situation of foreign workers and Roma people in the Czech Republic. They suffer from unemployment, substandard work conditions, institutionalised discrimination and racial hatred.

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The Czech Republic is facing numerous problems, as are many countries, as a result of the global economic crisis. Such problems include increasing unemployment, a decrease in industrial production, and the degradation of health and educational systems, to name a few. A new issue that has come to light due to the global economic crisis is the case of migrant workers. These people, who helped build the Czech economy by living and working abroad in precarious conditions, have been the first victims of the crisis. In comparison (but no less important), the problems faced by the Roma people have been known for decades. Increasing violence against the Roma and the growth of fascist and neo-Nazi groups have become a pressing problem, and one that divides Czech society.

Situation of the Roma minority¹

While the economic situation has deteriorated for the majority of people in the Czech Republic, socially excluded groups, including the elderly, single mothers and the Roma community, have borne the brunt of the economic crisis. Not all Roma people, who according to reliable estimates represent a minority of almost 250,000 in the Czech Republic, are affected by social exclusion, but the social and economic downturn has affected most of them. Data from 2006 reveals that 80,000 Roma live in as many as 300 socially excluded locations, and in 80 per cent of these locations the Roma constitute the majority (Gabal Analysis & Consulting, 2006). Reasons for the current situation include institutionalised discrimination, recent events and the Government's lack of interest in solving the problem.

In January 2008, the Agency for Social Integration in Roma Locations officially commenced operations. Its aim is to improve the living conditions of socially excluded Roma, abolish the 'ghettos', or at least substantially improving the quality of life in these locations, work towards the integration of Roma people into society, and assist a significant number of Roma to gain access to education, work opportunities and better housing.

The non-governmental sector hoped that the Agency represented a change in the State's attitude

towards social exclusion. However, the Agency commenced operations several months after the official date, and only in twelve locations. In the document defining the Agency's remit, the terms 'Roma' and 'socially excluded person' are used interchangeably. Thus, it would seem that the Roma are by definition socially excluded people, and vice versa. Surprisingly, the document does not clearly state how racist prejudice plays a role in the situation of the Roma people.

The Agency's main task is to make money available to pay for services (such as health care and education), and, as such, the Agency had been preparing to cooperate with interested parties on various projects in the target locations. However, as the Agency is a government body, it is bound by internal regulations, which prevented it from following its original plan of funding projects implemented by other organisation. Instead, the Agency has been relegated to an advice-giving role on solving the problems in the given locations. Thus, initial hopes for the Agency and for a change in the State's attitude towards the Roma people have not been fulfilled.

The deteriorating economic situation in socially excluded locations has not received the necessary attention of the Government. Socially excluded Roma people have tried to improve their economic situation themselves by borrowing money from informal creditors and loan companies, as many do not qualify for loans from commercial banks. Informal creditors (i.e., individuals) lend money at high interest rates and without any written contract, often reclaiming their money using violent means. Loan companies lend money at lower interest rates than these individuals, but bind their clients to contracts containing onerous conditions. Debtors are often confronted with unexpected and unpleasant surprises after entering into these contracts, creating a dependency on the creditor. If the debtor is late with just one payment, the total outstanding amount can increase to many times the original amount by the end of the year. The indebtedness often ends with a distraint being ordered upon the debtors' income, dispossessing them of the means to support themselves.

Inhabitants of some socially excluded locations suffer not only from serious economic problems, but also from racial hatred. The racist marches in Litvinov in 2008, during which Roma from the Janov suburb faced the growing manifestations of racism from both neo-Nazi groups and other inhabitants of the neighbourhood, were an alarming example. The current racial crisis is the result of long-ignored

problems in socially excluded locations, and, with the deteriorating economic situation, it is likely that extremism will appear more often. Another case that received extensive media coverage was the arson attack on a family in Vítkov in March 2009. Unknown assailants attacked the house of a Roma family at night, throwing incendiary bottles through the windows. The ensuing fire caused severe injuries to both parents and especially to their two-year-old daughter who suffered burns to 80 per cent of her body. The case is not being investigated as an act of racism, although it is the fourth arson attack on Roma in the area in the last seven months. In connection with this case, the Minister of the Interior, I. Langer, said it is necessary for the Roma to realise "it is not normal not to work and not to send their children to school, such behaviour will provide an impetus for racially motivated attacks".²

Another example of the Roma people's human rights being violated is segregation in the education system. Special schools for the Roma were replaced by vocational schools, but in many places these still act as instruments of ethnic segregation. But segregation happens, even if Roma parents succeed in enrolling their children in a 'normal' elementary school. A good example is the town of Valašské Meziříčí, where 20 children were registered for school, 10 of them Roma. From September, the school proposes to divide the children into two ethnic classes. The headmaster explains that parents of non-Roma children will move their children to other schools if they are in the same class as Roma children.

Throughout the year, an increasing number of Roma have applied for asylum in Canada, which the Czech Government puts down to economic reasons. There are many reasons why the Roma do not feel welcome in the Czech Republic, and the problems the Roma face are multi-layered. Fear of the increasing fascist tendencies in Czech society is a big issue, as is the oppressive economic situation. To reduce the whole complex of problems that drive the Roma to emigrate to simply 'economic problems' is a sign of insufficient understanding of the matter.

Situation of immigrant workers³

In 2008, the number of foreigners in the Czech Republic grew significantly beyond figures for 2007. By the end of the year, there were 438,301 foreigners, according to statistics from the Directorate of Immigration Police, an increase of 43,144 on figures for

² Czech TV programme CT24, 22:30, 20.4.2009

³ This section was written by Pavel Porízek.

¹ This section was written by Saša Uhlová.

the previous year and the second largest increase in the past 10 years. Of those, 172,927 were foreign nationals with permanent residence and 265,374 were foreign nationals with a long-term residence permit exceeding 90 days (CSU, 2009a). In total, 361,709 were employed as at 31 December 2008 – 284,551 by local companies (CSU, 2009b). Of the foreigners employed by local companies, 141,101 were nationals of EU, European Economic Area (EEA) and European Free Trade Association (EFTA) countries and 143,450 nationals of third countries.⁴ Employed foreigners were concentrated in the capital (31.7%) and in the Central Bohemia region (15.0%) (CSU 2009c). In 2008, 3,829 persons were detected residing illegally in the Czech Republic, following a decreasing trend (Czech Helsinki Committee, 2008, p.97).

There has been a visible change in the pattern of foreign nationals with a decrease in the number of foreign workers from Bulgaria and the Ukraine, contrasted by an increase in foreigners from Vietnam and Mongolia. There is a growing concentration of foreign workers in the Czech Republic, especially in the 'industrial zones' – not just from third countries, but also EU nationals. Government papers⁵ admit that neither local authorities, nor the general public are entirely prepared for such a surge of foreigners. The municipalities are having trouble absorbing the newcomers and there is an apparent tension between foreign workers and local residents.

The global economic crisis started to affect foreign workers in the Czech Republic during 2008, with the situation peaking in the first months of 2009 (by February 20,000 work permits were cancelled and a total of 68,000 are expected to be cancelled by the middle of the year). The Ministry of the Interior reacted by establishing a project of 'voluntary return'. The goal is to offer help to foreigners from third countries residing legally in the Czech Republic, who have lost their jobs due to the present economic crisis and want to return to their home country, but cannot afford it. The Czech Republic offers not only to arrange their flight, pay for their ticket and provide assistance before and during the return journey, but also contributes EUR 500 to cover the costs associated with leaving the Czech Republic (Ministry of the Interior, 2009). By the end of April 2009, more than 1,500 immigrants had taken up the offer.

During 2008, the exploitation of foreign workers by job agencies persisted, exacerbated by the global economic crisis. These workers, viewed as cheap labour, are willing to work hard in 'substandard'

conditions or conditions clearly unequal to those of Czech employees in the same company. They are dependent on the employer to an almost slave-like degree.⁶ This dependency is caused by a number of factors, be it the need to repay a loan taken to 'buy' the chance to work in the Czech job market, or the fear of losing employment (Czech Helsinki Committee, 2008, p.100).

Under the current public health insurance system, certain groups of foreigners are unjustly disadvantaged. Since December 2007, it is no longer possible for a relative of an EU or Czech citizen to request permanent residence immediately after gaining the status of citizen's relative. Instead, unless employed by a local company, they must live on a temporary stay permit for two years and have no access to the public health insurance system during that time. This limits them to commercial health insurance with all its disadvantages (narrower range of health care, no legal claim to it and, often, inadequate health insurance, especially for those with an illness or aged over 70). As for foreigners from third countries who are not related to EU citizens, by being excluded from the public health insurance system, neither the duration of the foreigner's stay in the Czech Republic or the amount of their (or their relatives') contribution to resources used to cover the costs of health care are taken into account.⁷

In the course of 2008, the Ministry of the Interior, together with other authorities, prepared to implement the 'Green Card' project, which is designed to solve the shortcomings of the current system of foreign worker recruitment, and to make the whole system more flexible (especially towards highly qualified workers) and easily adaptable to the immediate needs of employers.⁸ However, the Ministry of the Interior limited the list of countries whose citizens are entitled to request a Green Card, excluding Vietnamese, Mongolian, Russian and Moldovan nationals. A Green Card is issued by the Ministry of the Interior for a period of up to three years and combines a work permit with a long-term residence permit. The status of a foreigner with a

Green Card is undoubtedly stronger and more advantageous than that of a foreigner with a long-term visa/work permit, but so far uptake has been low.⁹

In 2008, the Ombudsman highlighted a number of shortcomings in visa practice, as well as in the monitoring of the Office of the Immigration Police Inspectorate (Konevova Street, Prague). Based on many stories in the media, the Ombudsman concluded in mid-2008 that the situation at the Office had returned after some improvement to its alarming state of affairs (i.e., illicit trading of queue numbers, running out of all queue numbers immediately after opening, etc.), which the Ombudsman perceived to be evidence of serious misconduct, especially as these practices create conditions conducive to non-standard procedures and corruption. In the last quarter of 2008, conditions were significantly improved due to the adoption of a number of measures (personnel reinforcements of policemen and civilian employees, separate entrances for third country foreigners and EU citizens and their relatives, the setting up of another detached office in Prague, which reduced the number of applicants at Konevova Street) (Ombudsman, 2008, pp. 76-77).

The situation of foreigners in the Czech Republic needs to be observed very carefully, because this group has been significantly affected by the economic crisis, which deepened their social exclusion, especially among foreigners in industrial agglomerations. The evident stagnation of the number of foreigners can be considered temporary. On the contrary, the number of foreigners is expected to rise, and integration will be (and in fact is) a great challenge for the Czech Republic. ■

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4 The number of these foreigners according to nationality: Ukrainian 81,072; Vietnamese 16,254; Mongolian 12,990. For details see <www.czso.cz/csu/cizinci.nsf/datove_udaje/ciz_zamestnanost>.

5 Report on "Conception of integration of foreigners in 2008", realisation and suggestion of another process, IV. Process of realisation of "Conception of integration of strangers in 2009", Interior Ministry document authorised by government decree on 16 February 2009 n. 183.

6 Many stories illustrating horrible and alarming work and living conditions of foreign agency employees are available from: <www.migraceonline.cz/czechmade>.

7 The Ombudsman referred to this problem (Press release Nerovné postavení cizinců v R v postupu k veřejnému zdravotnímu pojištění from 11 March 2009), <www.ochrance.cz/dokumenty/dokument.php?back=/cinnost/index.php&doc=1454>, also referred to in Report of human rights' state in the Czech Republic 2008, Chapter 9.3: Problems in health insurance of some categories of foreigners from third countries, who permanently stay in the Czech Republic, page 98 and also in the Report of the Czech Helsinki Committee about human rights' state in 2008, from 4 May 2009, part on Foreigners' situation.

8 The project has been authorised by government decree n. 1174 from 22 October 2007 about condition simplifications for employment of qualified foreign workers. For details see <www.mvcr.cz/clanek/migrace-novy-clanek-890951.aspx?q=Y2hudW09NQ%3d%3d>.

9 There is no interest in Green Cards: so far only one foreigner has received one at EURO weekly's server (Klepalova, 2009).

Incoherence between Migration and Development Policies:

The Case of France

The French Government is increasingly using aid to promote its geopolitical interests. A new ministry, bringing together migration, integration, national identity and development was created in 2007. The French Government clearly intends to gear development policy towards migration control, using part of the Official Development Assistance (ODA) budget. This is the first time that such a link between the fight against illegal migration and development has been made so overtly in France.

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Coherence upside down: When migration control drives development cooperation

In 2007, a new French Government was formed including a new ministry called the Ministry of Immigration, Integration, National Identity and Co-Development (MIIDS). According to MIIDS, the term 'co-development' refers to all development assistance projects involving migrants living in France, whatever form they take. This term was replaced by the term 'cooperative development'¹ in March 2008, which encompasses both co-development and:

...sectoral development assistance projects in countries of origin where there is a strong emigration towards France. These should contribute to control migration flows. (CICI, 2008, p.172)

This change illustrates the Ministry's ambition to influence French development policy to link migration control to development. MIIDS has three objectives: to place migration at the centre of development policy; to organise migration in a 'concerted' way with countries of origin; and to support migrants' efforts for development in their country of origin.

The Inter-ministerial Committee for International Cooperation and Development (CICID) is responsible for coordinating French development policy. It was co-chaired by the MFA and the Ministry of Economy and Finance, until the decree of 22 November 2007 gave MIIDS a seat in the CICID at the same level as the two other ministries. This allows the MIIDS to weigh in on French development policy. The MIIDS is also a board member of the French Development Agency, which manages a growing part of ODA, and of other bodies involved in development cooperation. Hence, migration is increasingly being mainstreamed in ODA programmes. It is systematically

mentioned in partnership framework documents (which are negotiated with partner countries and define the priorities of French aid for five years), and ODA resources are being mobilised in bilateral agreements for the 'concerted management of migratory flows'.

Whereas MIIDS is becoming more and more important in the planning and management of French ODA, interestingly, the MFA is completely absent from the Inter-ministerial Committee for Immigration Control (CICI), which deals with migration policy issues. While bilateral agreements on the concerted management of migration flows do include a chapter on development policy, the Minister for Foreign Affairs (who is officially responsible for policy coherence) is neither consulted nor involved in the negotiations, except in relation to visa and consular matters. French development policy is, therefore, coherent with short-term migration objectives. This is not in line with France's policy coherence commitment² at the European Union level, which should lead France to reform its migration policy to make it coherent with development objectives (not the other way around). The Organisation for Economic Co-operation and Development/Development Assistance Committee (OECD/DAC), in its 2008 Peer Review of French development policy, recommends:

...to forestall the risk of development assistance policy being used to manage migratory flows, steps should be taken to ensure that the institutions involved in co-operation can assert the matter of the impact on developing countries in the discussion of migration policies. (2008, p.35)

This is absolutely not the case today.

So-called 'cooperative development' programme: Limited resources, wide objectives

In terms of financial resources, the MIIDS does not directly manage significant amounts of ODA. According to the DAC, in 2007/08, these resources

represented one or two per cent of French programmable bilateral aid³. In 2009, 25 million Euros was allocated to the cooperative development programme to implement three actions.

At the multilateral level, France plans to set up a trust fund with the African Development Bank, dedicated to cooperative development, containing 9 million Euros allocated for 3 years. This fund would support projects in Africa only regarding migrant remittances, micro-enterprise projects or migrants' projects. Through this fund, France intends to promote, at the multilateral level, its own approach to the migration and development nexus, which is that development aid should, as a matter of priority, be used to finance development projects in countries of origin. The theoretical basis for this position is that more development leads to less migration. This assumption is not only wrong (in the short and medium term, it is in fact the opposite), but can lead to the use of development aid as an incentive in negotiations with countries of origin on migration control.

At the national level, 3.5 million Euros will be allocated to provide assistance to migrants resettling in their country of origin. These projects are implemented by the French Office for Immigration and Integration and have nothing to do with development policy.

Most of the aid managed by the MIIDS is, in fact, allocated to the 'cooperative development' chapter of agreements on the 'concerted management of migration flows' (CICI, 2008). The geographic priorities include all countries where bilateral agreements on the 'concerted management of migration flows' have been either signed (Gabon, Congo, Benin, Senegal, Tunisia, Mauritius, Cape Verde), planned (Mali, Cameroon, Democratic Republic of Congo, Haiti, Mauritania etc.), or are crucial for migration

³ Country programmable aid (CPA) is the amount of aid that can be programmed at partner country level. CPA is defined by subtracting from total gross ODA aid that is unpredictable by nature, entails no cross-border flows, does not form part of cooperation agreements between governments, or is not country programmable by the donor.

¹ In French: 'développement solidaire'.

² Treaty on the Functioning of the European Union, Article 188d.

control (Algeria and Morocco) (CICI, 2008, p.177). Almost 18 million Euros will be used in 2009 on cooperative development for agreements already signed. MIIIDS also intends to use additional resources from the MFA, which should be allocated to development projects planned under partnership framework documents.

Even if MIIIDS directly manages only a small proportion of French aid, its influence on overall development policy is increasingly significant. This could lead to development policy being used for migration control objectives. With the negotiation of agreements on the 'concerted management of migratory flows', including the financing of development projects, a dangerous link has been made between migration control and ODA.

Agreements on 'concerted management of migration flows and cooperative development'

The European Pact on Migration and Asylum, adopted in October 2008, was one of the highest priorities of the French Presidency of the EU. It argues that the effective management of migration must include legal migration, the fight against illegal migration, and economic and social development of countries of origin. It is referred to as a "global approach to migration". The Pact emphasises the need to include migration issues in the definition of development policies. The Pact invites Member States to conclude agreements, at EU and national levels, with countries of origin and transit. It suggests that migration should become an important element in all external relations of Member States. This implies that Member States, in their relations with developing countries, should consider the quality of the dialogue on migration issues. Interestingly, there was not a single consultation with civil society organisations before the adoption of the Pact, not even with migrants and their associations, even though they will be directly impacted by the Pact.

The European Pact on Migration and Asylum was inspired by the French model of bilateral agreements on the 'concerted management of migration flows and cooperative development'. Agreements on the 'concerted management of migration flows' aim at selective migration by facilitating border controls and the repatriation of undocumented migrants, while at the same time selecting the best qualified workers according to French economic needs.

MIIIDS has been in charge of negotiating these agreements since its creation. The first agreement, with Senegal, was in fact negotiated in 2006 by Nicolas Sarkozy when he was Interior Minister. There is no coherence between the content of this chapter and the content of the partnership framework documents. On the contrary, MIIIDS intends to influence the content of these documents and guide them towards its migration control objectives. According to these agreements, civil society organisations, in France and in the developing

countries, are supposed to implement part of the development chapter.

While civil society organisations, and in particular migrants' organisations, are involved in the negotiations on partnership framework agreements, these organisations are excluded from discussions on agreements for the 'concerted management of migration flows'. The negotiation process for these agreements is definitely not transparent. It is extremely difficult to gain access to draft agreements before they are signed; they are only available once they are sent to Parliament for ratification in France.

In addition to the 'cooperative development' chapter, there are two other chapters. One deals with the conditions for legal migration and a list of jobs open to workers coming from developing countries, the other establishes a commitment to bilateral cooperation in the fight against illegal migration – a key aspect of these agreements. Some cooperation measures are funded by ODA. In the Senegalese agreement, the Senegalese police force is proposed to be modified in order to include the implementation of border patrols along its shores.

The French Government has set ambitious annual targets for the repatriation of undocumented migrants from France (26,000 people in 2008, 27,000 in 2009). In order to reach these targets, France needs to make sure that it receives support from countries of origin or transit in the delivery of the needed 'laissez-passer', to enable repatriation to be effectively carried out. Negotiations are being conducted with some countries considered by French authorities as not very cooperative in this regard, such as Cameroun, Guinea and Mauritania.

Most readmission negotiations not only include the repatriation of undocumented migrants, but also the repatriation of third-country nationals who transit through signatory countries. Most transit countries are reluctant to agree to repatriate such migrants. Readmitting their own nationals is also a very sensitive issue, as public opinion in transit countries is more and more concerned with the fate of their country fellows in France. This could explain the lack of transparency in negotiations, as officials are concerned about the public outcry (and resistance) if negotiations on such sensitive issues are made public. In countries where civil society is aware of what is at stake, such as Mali, negotiations have been more difficult. To achieve its goal, France offers incentives such as visas, regularisation (which is quite difficult as the European Pact now bans large-scale regularisations) and additional development aid.

So far, seven agreements have been signed with: Senegal (September 2006), Gabon (July 2007), Republic of Congo (October 2007), Benin (November 2007), Tunisia (April 2008), Cape Verde (November 2008) and Burkina Faso (January 2009). Agreements are foreseen with Mali (which has so far strongly resisted), Cameroun, Egypt, Haiti, the Philippines, Guinea, Mauritania and the Democratic Republic

of Congo. The target set by MIIIDS is to sign seven agreements every year between 2009 and 2011.

Conclusions

The position of French NGOs on this trend is very clear: Using development aid as a tool in the fight against migration is not only dangerous, but also counterproductive.

Migration is part of human history. Instead of a simplistic cause-effect relationship (more development – less migration), the migration-development nexus – needs to be understood from a triple-win perspective, whereby migration benefits the country of origin, the host country and, first and foremost, the migrants themselves. This is not what the European Pact and the French model are proposing. Such Euro-centred, security-based and utilitarian policies will not only fail to stop migration, but, by pressuring countries of origin and transit to better control migration flows, they are opening the door for the widespread violation of migrants rights in the countries they live in, transit through or are forced to return to.

Migration from developing countries is driven by a wide range of causes such as poverty, conflict, lack of democracy, environmental degradation, corruption, unfair trade agreements and so on. Developed countries carry a part of the responsibility for this situation. One would expect developed countries to focus on finding a long-term solution to economic and social exclusion, rather than targeting those who are left with no other option than to migrate irregularly. Moreover, the UN Declaration on the Right to Development, adopted in 1986, clearly reminds us that development is a right and cannot be subjected to any condition.

During the French Presidency of the EU a strong movement originated in France leading to the 'Bridges, not walls!' citizen's summit in October 2008. This summit attracted 1000 civil society representatives from 30 countries. Seventy recommendations were produced during the summit, which called for, among other things, development aid to be disconnected from migration policy⁴. ■

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4 In November 2008, MIIIDS hosted the Second Euro-African Inter-ministerial Conference on Migration and Development in Paris. Access to the conference was refused to a 'Bridges, not walls!' delegation, and a request to disseminate the summit recommendations to official delegates was denied (see <www.despontspadesmurs.org>).

Immigration in Greece

Being located at a geographical crossroads, Greece's immigration policy is based on border control and the fight against so-called 'illegal immigration'. Even though immigrants represent a valuable workforce to Greece, they suffer from exploitation and legislative discrimination.

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The fight against 'illegal migration'

Instruments for the strengthening of European borders

Greece counted approximately 400,000 undocumented immigrants before the 2001 regularisation – falling to between 230,000 to 330,000 in 2004 (Kanellopoulos et al., 2006). According to the latest estimates, there were 205,000 undocumented immigrants in Greece in 2007. Albanians constitute the largest portion of undocumented immigrants (around 34%); however, reliable estimates of the percentage of undocumented immigrants from Africa, Asia and the Middle East are not available (Maroukis, 2008).

In recent years, the Frontier Control and Coastal Guard have strengthened controls on entry points, and further intensification is expected in the coming years. The European Union External Borders Fund (574/2007/CE) has a total budget of 1,820 million Euros at its disposal. Greece will receive 148 million Euros for the period from 2007 to 2013 within the frame of the Community multiannual programme for the management of external borders and has created a specific authority for the management of these funds (Naftemporiki, 19 December 2008). However, it is worth noting that, until now, efforts aimed at reducing informal immigration, which are mainly focused on increasing border controls, do not seem to prevent 'clandestines' from entering Greece: In 2008, 11,000 foreigners of 'illegal' status arrived on the island of Lesbos alone, double the number in 2007 and 10 times the number in 2003 (Eleftherotypia, 5 November 2008). The fact that Greece is located at a crossroads for undocumented immigrants from Eastern Europe, Africa and Asia on their way to the 'Western World', as well as its geographical characteristics (mountainous with long land borders and an abundance of small islands along the length of its immense sea border with Turkey), render the control of illegal immigration particularly difficult, both in relation to migrants arriving for the first time and those re-entering Greece after a previous expulsion.

In addition, Greece's immigration policy, which is based on frontier control, ignores the fact that many undocumented immigrants enter legally (often on a three-month tourist visa) and remain in the country

after the expiration of their visa, passing from legal to illegal status.

The criminalisation of undocumented migrants

According to data from police and port authorities, in 2007, 112,364 foreigners were arrested for illegal entry and stay in Greece (103,124 by police and 9,240 by port authorities), an increase of 12.4 per cent from 2006 (in which 91,783 were arrested) (Minister of Interior, 2008). In 2008, 146,337 foreigners were arrested for illegal entry and stay, an increase of 30.25 per cent¹. However, these figures do not take into account the situation where the same person is arrested more than once. In addition, the increase in 'arrests' for illegal entry or stay may be due to the increase in control structures for illegal immigration and stricter enforcement by police (an increase in the checking of identity papers). For example, it is very probable that these practices are more severe now than during the pre-2004 Olympic Games period.

Immigrants arrested because of their illegal status are kept in police detention cells or in detention centres until deportation. According to law, the period between the deportation decision and their expulsion cannot exceed three months. However, serious difficulties with the verification of detainees' identity and nationality often leads to the expiry of this period and renders expulsion impossible². Thus, detainees are released after three months until their next arrest, and the nefarious cycle of detention and illegal stay in Greece continues³.

1 Hellenic Police official data available from <www.astynomia.gr/images/stories/egklhm2008paper.pdf>.

2 For 2005 and 2006, among the 161,590 arrests of illegal immigrants, 133,800 were expelled or transferred to the country of entry origin.

3 A new amendment to Greece's existing legislation (June 2009) will allow authorities to classify as 'dangerous to public order and safety' any foreigner who is charged with committing a crime that carries a prison sentence of three months or more. This will lead to both legal and illegal foreigners being deported for misdemeanors, even if they are not convicted. The permitted detention period until expulsion has also been extended from three to nine months.

4 According to a study by the National Centre for Social Research (EKKE), 7 in 10 of those arrested for committing forgery in 2007 were immigrants. Complex procedures for obtaining residence permits and asylum might be to blame for fuelling this activity. In the same year, almost 93 per cent of those arrested for begging were migrants (Kathimerini, 2009).

The perception that an increase in criminality is related to the big wave of foreigners is reinforced by the fact that 45 per cent of detainees in Greece are foreigners (Varvitsiotis, 2007). However, there is no analytical data on the reasons for their detention; hence, it is unclear how many are detained merely for being 'illegal'⁴. The high proportion of foreigners among detainees may also be explained by the fact that many immigrants cannot cover bail or are ineligible for a commutable sentence.

Repatriation policies

The Greek State does not offer any incentive for voluntary return, nor does the existing legislation regulate voluntary return. Therefore, the term 'return' usually means 'obligatory return', and refers to the judicial and administrative process of expulsion of third-country nationals. Moreover, as well as not offering incentives for voluntary return, Greece's institutional framework creates obstacles, as there is no provision for the transfer of rights in relation to social insurance to the countries of returning migrants (excepting the Greek-Egyptian Agreement).

Cooperation between Greece and immigrant sending countries in the fight against illegal immigration

Bilateral police cooperation or readmission agreements between countries of origin and destination have been signed with Egypt (1984), Bulgaria, Romania, Lithuania and Croatia (all in the 1990s). A Readmission Protocol was also signed with Turkey in November 2001 (and came into force in August 2002) concerning the readmission of citizens of either country or third-country nationals who illegally enter the territory of either Greece or Turkey. However, according to a representative of the Ministry of Foreign Affairs, from April 2002 until May 2007, Turkey only accepted 1,646 readmissions of the 24,754 requests (6.65%) (Eleftheros Typos, 7 October 2007).

A number of agreements have also been signed between the EU and third countries. In February 2009, Albanian police and Frontex (the EU service for operational collaboration in the management of EU external borders) signed a collaboration agreement for the safeguarding of Albanian and EU borders in order to strengthen the fight against cross-border crime and illegal immigration. This collaboration involves information exchanges and professional training programmes for Albanian police officers.

Migrants in the Greek labour market

In Greece, the principal way for an 'illegal' immigrant worker to transmute from an illegal to a legal status is through regularisation programmes. So far, only three regularisation programmes have been run, in 1998, 2001 and 2006.

Quotas for legal immigrants and sub-quotas per nationality or sector

According to Greek Laws 3386/2005 and 3537/2007, a Committee is constituted in each region to prepare a report defining the region's workforce needs and the vacancies available to third-country nationals by activity, geographical prefecture and duration of employment. Based on this report, a co-ministerial decision determines the maximum number of residence permits for dependent work that can be granted to third-country nationals each year per prefecture according to nationality, type of work and duration of employment.

Third-country nationals are allowed to work in Greece at the invitation of a specific employer and in one of the defined types of employment/geographical areas, provided that the corresponding entry pass has been granted. The 'invitation' procedure is so complex that it takes 12 to 18 months from when the process starts to when the migrant worker actually arrives in Greece to take up the advertised job – a period during which labour market needs have probably changed (Triandafyllidou, 2008).

The impact of migration on the Greek economy

About 16 per cent of individuals insured by the Greek National Social Security Institution (IKA)⁵ and 15 per cent of those with medical insurance, are foreigners, and 52 per cent of these foreigners are Albanians (IKA, 2008). Immigrants pay annual contributions of 887 million Euros to the IKA and produce 2.6 per cent of Greece's GDP (Arvanitis, 2007). Their participation in Greece's national economy is significant as:

- They must pay insurance to Greek social security organisations before they can be regularised or to renew their residence permit.
- However, Greek social security organisations do not provide migrants with a retirement pension and the cost of providing medical benefits is low as most foreigners are young: In December 2007, 35.5 per cent of Albanian workers insured by IKA were under 29 years old (compared to 28.55% for Greeks), and 70.9 per cent were under 39 years old (compared to 61.55% for Greeks).

Exploitation of migrants as a cheap and flexible workforce and discrimination in the labour market

According to official IKA data, the average wage for a foreigner working in enterprise and construction

insured by IKA is 36.7 Euro per day, compared to the average wage for Greeks, which is 51.0 Euro. Excluding the construction sector, the average wage is 50.6 Euros for Greeks and 32.5 Euros for foreigners (IKA, December 2007). In other words, in the legal labour market, the average wage for a foreign dependent worker is 28 per cent lower than that for Greeks. In the construction sector, this difference increases to a massive 35.8 per cent.

Additionally, foreigners cannot work in the public sector, as Greek legislation does not allow them to take the official state examination for such work. This legal discrimination excludes not only immigrants with similar or equivalent qualifications, but also immigrants who were raised in Greece, who studied at Greek schools and universities, and who have exactly the same qualifications as Greek natives. Immigrants can, however, be 'rented' as interim workers or hired by temporary work agencies to provide work services in the public sector. The tragic case of Bulgarian immigrant Constantina Kouneva, General Secretary of the Janitors and Domestic Service Staff Union of Attiki (PEKOP), highlights the discrimination and exploitation suffered by migrants. Kouneva was attacked on December 2008 by assailants who threw acid into her face to punish her for trade union activities, for which she had received repeated death threats. The case brought to light the working conditions hidden behind the sub-contracting of services, especially in the public sector (she was working for a company undertaking contracting work for the cleaning of public amenities in the Athens Public Metro). Employees of such contracting companies, and immigrants in particular, are exposed to severe exploitation: the national media reported that these agencies often do not pay social service contributions or contributions for a health-risky job, nor do they pay overtime; they register fake working hours, force workers to sign blank papers declaring fake wages, and so forth (To Vima, 15 January 2009).

The above remarks concern only the legal labour market. Yet, it is estimated that, for 2007, undeclared employment represented 25 per cent of the volume of total employment (approximately 1,100,000 persons), which corresponds to more than 20 per cent of Gross National Product (GNP) (Labour Institute of the General Confederation of Greek Workers, 2008). Therefore, the size of the informal economy in Greece, along with the limited (both in number and in time) procedures for regularisation, supports the informal employment of immigrants. According to the latest Hellenic Migration Policy Institute (IMEPO) research (2008), undocumented immigrant workers mainly come from Albania, but small numbers from other countries such as Bulgaria, Georgia, Moldova, Romania, Egypt and Pakistan. Undocumented immigrant workers are primarily occupied in agricultural or domestic activities. Some work in hotels, restaurants, fisheries, raising stock and in private households. According to research results, for every

thousand legal immigrants, there are 243 'illegal immigrants' in the same areas (Lianos et al., 2008).

However, data on exploitation and discrimination in the grey labour market are almost inexistent. A noteworthy case in this regard is the case of Nea Manolada⁶, in which immigrant agricultural workers in the strawberry crops started a strike in reaction to the humiliating salary of 18 to 23 Euro per day for a 10 to 12 hour day. The publicity caused by the strike brought the problem to the attention of the Greek Parliament (08/05/2008 Debate). Let us recall here that, according to the latest General Collective Agreement (dated 18 April 2008), the minimal daily wage from 1 January 2008 was raised to 30.40 Euro for an unmarried worker and 33.45 Euro for married worker, and this is for a 6.40 hour working day. ■

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5 All data referring to IKA are coming from IKA's statistical reports available on the site: <www.ika.gr>.

6 These events took place in the province of Ilia (in the Peloponnese), which produces 90 per cent of Greece's strawberries.

Migration in Hungary

Hungary's immigration policy focuses on the fight against illegal migration, but an explicit overall migration strategy is blatantly lacking.

Matyas Benyik
ATTAC Hungary

Hungary is a country of about 10 million inhabitants. It has been open to international migration since the systemic change in 1989. Hungary's immigration policy has been largely shaped by European integration, i.e., the harmonisation process and the transposition of European Union directives, the Schengen Acquis, the Hague Programme, and other EU policies and legal provisions. Policies on entry, exit and stay of third country citizens, on border management, labour regulations for foreigners, asylum, family reunion and respect for the human rights of migrants are fully harmonised with the respective international conventions and with the Acquis Communautaire of the EU. On 21 December 2007, Hungary joined the Schengen Area and Hungarian legal rules now include the Schengen legal provisions. As regards the expulsion of irregular migrants, alien policing authorities are governed by multilateral agreements between the EU and third countries and by bilateral readmission agreements.

While there have been some positive developments in the areas of detention and access to labour markets, the Reception Directive has not yet been fully transposed into national legislation. As a result, many current provisions of the Asylum Act still do not meet the required minimum standards of the EU Directive.

In addition, due to the broad formulation of this and other EU directives, the few amendments that have been made by the Hungarian Parliament so far have not significantly improved the lives of asylum seekers and refugees residing in Hungary.

Features of international migration in Hungary

The proportion of legal immigrants living in Hungary is relatively low compared to other European countries. At the end of 2007, there were 166,693 foreign citizens (1.6% of the total population) living in Hungary with either a residence or immigration permit for a period exceeding three months. Two-thirds of foreign citizens living legally in Hungary are from neighbouring countries and are mostly ethnic Hungarians (i.e., people of Hungarian origin, who are considered part of the broader Hungarian nation); approximately 12 per cent arrived from Asian countries (of which 8% are from China and Vietnam); and 12 per cent have citizenship of the

EU-15 countries. Since 2000, the annual number of people obtaining Hungarian citizenship has varied from 3,000 to 10,000, a group still dominated by ethnic Hungarians.

The number of foreign citizens immigrating to Hungary has varied from 20,000 to 23,000 since 2000. The majority of these migrants come from Romania, Serbia, Montenegro and the Ukraine. The number of asylum seekers arriving in Hungary has been changing year by year; the peak was in 2001 (9,554 persons), the lowest number of applicants was in 2004 (1,600 persons). In 2007, the number of asylum seekers went up to 3,419, and the top 5 countries of origin for asylum applicants were Vietnam, Serbia, China, Montenegro and Iraq. Last year, Serbians and Montenegrins represented more than half of the asylum applicants.

Immigration to Hungary from countries in Central and Eastern Europe, and from China and Vietnam is primarily labour migration, often based on seasonal or temporary employment or on business. On the other hand, immigration to Hungary from poverty stricken or war torn developing countries is mainly transit migration.

Irregular migration basically involves either transiting through Hungary without proper documents, illegal residing in Hungary, or the engagement by non-EU citizens in unlawful employment, typically of the seasonal or temporary kind. Of these, the main form of irregular migration is for transit purposes, but certain groups of irregular migrants do settle in Hungary.

Hungary's policy on irregular migration is shaped by the country's EU membership and by the fact that Hungary is in the Schengen Zone. In 2007, besides 166,600 legal migrants residing in the country, the estimated number of irregular migrants was between 30,000 and 50,000. According to expert estimates, about half of these irregular migrants are citizens of China, and the rest are distributed (in decreasing order of magnitude) between Vietnamese, Ukrainian,

Serbian (including Kosovo Albanians), African and other Asian immigrants. It is assumed that among the migrants with resident permits, the proportion of men is very high (it may even reach up to 80%) and that 90 to 95 per cent of the total are aged 20 to 59. Between 2000 and 2006, altogether 31,450 asylum seekers submitted applications for recognition of their status. The overwhelming majority of asylum applicants had arrived illegally into Hungarian territory.

From illegal to legal status

The largest flow of irregular migrants to Hungary is constituted by people who arrive legally, but extend their stay beyond the permitted time limits (i.e., 'overstayers'). No reliable estimate exists for the number of overstayers.

The number of 'border violations' peaked in the mid-1990s, with 27,000 to 30,000 border apprehensions of migrants. Since then, a significant and constantly decreasing tendency has been observed, resulting in an annual figure of around 8,000 to 10,000 people detected crossing the border illegally. Nowadays, compared to other neighbouring EU member countries, irregular border crossings into Hungary are insignificant. In 2007, migrants entering Hungary illegally and being apprehended at the borders arrived from the following countries (in decreasing order of number of apprehensions): Ukraine, Serbia (Kosovo region), Moldova, Romania, Turkey, China, Georgia, Bosnia Herzegovina and Vietnam. In the same year, the overwhelming majority of migrants entering Hungary illegally and being apprehended at the border were caught at official border crossing points located on roads. Somewhat less frequent were arrivals through the green borders (i.e., unguarded borders, in German *grüne Grenze*). A very small number of apprehended illegal migrants arrived by air.

Most irregular migrants attempt to legalise their residence with the help of various strategies. For most illegal migrants apprehended by the authori-

Table 1: Balance of asylum seekers arriving in Hungary by year of entry and according to mode of entry

| Asylum seekers | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008* |
|------------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| Total number | 9,554 | 6,412 | 2,401 | 1,600 | 1,609 | 2,117 | 3,419 | 3,118 |
| Entered legally | 1,435 | 684 | 558 | 454 | 569 | 586 | 595 | 239 |
| Entered illegally | 8,119 | 5,728 | 1,843 | 1,146 | 1,040 | 1,531 | 2,824 | 2,879 |
| Refugee status granted | 174 | 104 | 178 | 149 | 97 | 99 | 169 | n.a. |

NOTE: *complete data not available for 2008

Source: Hungarian Central Statistical Office, Budapest (2008) and Office of Immigration and Nationality, Budapest (2009)

ties, entering the asylum process is the main way of legalising their stay in Hungary. In 1999, there were 11,500 asylum applications, with 5,100 submitted by citizens of the countries of former Yugoslavia and 6,000 by non-European citizens. Since then, there have been hardly any European applicants. In 2002, European asylum applicants amounted to only 7 per cent of all applicants. In recent years, the majority of asylum seekers have arrived from Asian countries such as Iraq and Afghanistan.

Marriage with a Hungarian citizen or with a citizen of another European Economic Area (EEA) country may lead to the legalisation of the status of an illegal migrant. Alternatively, since 2007, migrants are entitled to residence if a child is born of whom the migrant is the parent and the child is a Hungarian citizen or the citizen of another EEA country.

Hungarian authorities have initiated only one regularisation campaign. Law No. 29 of 2004 has introduced various modifications to existing Hungarian regulations. As a result of disseminating the regularisation offer among the relevant communities, altogether 1,406 people presented themselves to the alien police, of whom more than 60 per cent were Chinese or Vietnamese citizens.

In 2007, 3,419 people arrived in Hungary and submitted applications for refugee status. Out of these, 82 per cent arrived illegally, i.e., by crossing the border without documents or by overstaying. However, during the administrative process of determining their eligibility for refugee status, these people count as legal migrants. The majority of migrants who enter the country illegally only transit through Hungary on their way to other West European countries.

Conditions in reception facilities

According to the old Alien Act of 2001 on the Entry and Stay of Foreigners, persons who entered Hungary illegally and did not apply for asylum, or who were 'returned' from neighbouring countries within the framework of readmission agreements, could be detained in Border Guard Community Shelters. If such persons applied for asylum while in the shelters, they were given access to the refugee status determination procedure, but remained in confinement. Only the most vulnerable cases had access to open Refugee Reception Centres. The new Aliens Act of 2007 no longer provides for the deportation of illegal border-crossers on the basis of readmission agreements, which was ordered without a written administrative decision under the previous Aliens Act. According to the new Act, deportation may be ordered only by the decision of the immigration authority or of the court, and the period of detention has been decreased from one year to six months, including the period of detention prior to expulsion. Under the new Act, the third-country national now has the opportunity to lodge an appeal against the decision, but asylum-seekers may be detained during the period of their administrative procedure.

During a monitoring mission of the Hungarian Helsinki Committee and United Nations High Commission for Refugees (UNHCR) to several reception and detention facilities in October 2006, many asylum seekers complained about both the quantity and the quality of the meals provided, as well as about cultural and religious sensitivity, and the lack of information available about both the asylum procedure and reception conditions, including health care, access to the labour market and education. One area of concern is health care provided to mentally ill persons and victims of torture, both in detention and reception facilities. Another problem is with the individualised assessment of the asylum seeker's personal circumstances when ordering or maintaining detention, and the lack of documentation and information on the legal process provided in such facilities. Detention conditions, as well as the high security prison regime in some detention facilities, also pose a grave problem.

Although detention conditions have improved in the past few years, they vary among facilities. The detention centre of Nyírbátor at the Ukrainian border, for example, has a regime stricter than that of a high security prison. In other facilities such as in Győr, the building accommodating asylum seekers and other foreigners is unsuitable for housing people. Material conditions also vary according to the facility. While the Bicske reception centre used to be a housing complex for road workers and is considered an adequate reception facility, the Debrecen reception centre served as military barracks for the Soviet Army and the conditions have not changed much since their departure.

Immigration policy and debates in Hungary

The battle against illegal migration is an important pillar of Hungary's migration policy, based on EU policies and directives. Political discourse about illegal migration is strongly influenced by the official communications of the Office of Immigration and Nationality (OIN) and the Border Guard, which has recently been merged with the Police. Discourses about illegal migration arise mainly in connection with criminal policy (e.g., the fight against human smuggling and trafficking), security policy (e.g., measures taken against document falsification) and the protection of human rights (e.g., the right to family reunion). There is a lack of public debate about an overall migration strategy that considers the full scope of the social, economic and political interdependencies of the migration phenomenon. In addition, there is a rising xenophobic and nationalistic tendency among Hungarians, which is clearly seen if we look at the results of the latest EU parliamentary elections (the far-Right party, Jobbik, received almost 15% of the votes). The Right-wing media is against non-Hungarian migrants and sympathises only with ethnic Hungarians. Despite its shrinking population, which creates shortages in the national labour market, Hungary's migration policy is mainly

characterised by solidarity with Hungarian communities in neighbouring countries (diaspora politics).

Critics of the official migration policy often point out that the implementation of Hungarian migration policy is characterised by short-term, security-oriented treatment of the issue through defensive measures against non-Hungarian migrants, border control and residency rules, without a proper explicit overall migration strategy. ■

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The Institutionalisation of Racism and Xenophobia in Italy

The Italian Government has recently adopted a number of security-oriented measures, referred to as the ‘security package’, which severely harm the rights of immigrants and lead to the worrying legitimisation of xenophobia and racism.

Grazia Naletto
Lunaria

In April 2009, Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, published a report (Hammarberg, 2009), written after his visit to Italy from 13 to 15 January. This report denounces the alarming tendency towards racism and xenophobia in Italy. It expresses true concern about immigration and security measures (described in the report as ‘draconian’), as well as about the census operation being conducted on the Roma population, because it involves the fingerprinting of even under-age children. Hammarberg suggests that the Italian authorities should:

...ensure a prompt reaction and condemn strongly and publicly all statements, irrespective of their origin, that generalize and, as a consequence, stigmatize certain ethnic or social groups, such as migrants and Roma or Sinti. They should also see to it that their own legislative or administrative initiatives cannot be construed as facilitating or encouraging the objectionable stigmatization of the above groups.

He also solicited the reintroduction of stricter rules in order to fight racist acts and violence through the revision of Law no. 85/2006 (which halved the punishment for the instigation of racial hatred); the institution of a National Agency for Human Rights; and the strengthening of the autonomy and effectiveness of UNAR (Ufficio Nazionale Antidiscriminazioni, ‘Razziali’).

Commissioner Hammarberg is not the only one to speak out about the Italian situation: Over the last two years, the measures adopted by the Italian Government on migration, ‘security’, and asylum, Italy’s ‘collective refusal’ of migrants arriving at its southern coasts, as well as measures that violate Roma and Sinti’s rights, have attracted international attention and generated public debate. The synergies between initiatives that institutionalise discrimination and the information campaign promoted by some national media, with the over-reporting of crime news involving citizens of foreign origin, have led to an increase in racist acts, including violence, perpetrated in all aspects of social life in Italy. In fact, Italy has culturally, politically and institutionally legitimised xenophobia and racism. The rhetoric of fear, used irresponsibly by politicians and institutional

figures, is gaining consensus among the public, feeding a dangerous intolerance that all too often turns into racist acts and violence. The immigration and security measures adopted by the Government have played a central role in this context.

The cultural legitimisation of discrimination started in the mid-1990s when Lega Nord – an autonomist and xenophobic political movement born in the North of Italy at the beginning of the nineties – leveraged the social and economic hardship experienced by some North Italian areas, due to globalisation and competition with emerging markets, for political gain. The rise in migratory flows gave the party an opportunity to frame an ‘outside’ enemy as a way of achieving an easy consensus; the aim was the conversion of the new ‘enemy’ into a scapegoat for every source of social and economic fragility.

At that time, Lega Nord was a minor political force; today it governs Italy and has the power to convert to law a citizenship model based on *ius sanguinis* (right of blood). This aim is being achieved with the popular support that Lega Nord overtly courted and stirred up.

The novelty of the approach taken by Lega Nord is that the difference between regular and irregular immigrants (which was a pillar of the previous Right-wing legislation) loses its relevance. Instead, an ancient distinction has gained significance: nationality outlines the border between who has the right to exist and who does not.

The shamelessness with which the legislators in Italy are increasing the distance between ‘us’ and ‘them’ is the main break from the past. The legitimacy of denigrating foreigners, sanctioned by the media and in some instances the legal system, manifests itself in racist and discriminatory acts and violence.

The new security package

The Italian Government has recently adopted a number of measures in the name of security that severely harm the rights of immigrants.

The so-called ‘*Pacchetto sicurezza*’ (security package) (Law no. 125/08, Decree no. 159/08, Decree no. 160/08 and Law no. 94/2009), approved by the Council of Ministers, is composed of different measures including standards on public security and new rules about family reunion. Here is a short review of these, and other, measures that affect the rights of immigrants in Italy:

- **Aggravating penalty:** Among the most severe measures approved is the introduction of the ‘aggravating penalty’ for irregular foreign citizens (Law no. 125/08). On the basis of this new rule, if an irregular foreign citizen commits an offence, the punishment is increased by one-third. In substance, being ‘foreign’ attracts different treatment than that given to Italian citizens committing the same offence. It is an overt violation of the constitutional principle of equality of all before the law.

- **Family reunion:** Decree no. 160/08 restricts the right to family reunion, limiting it to a major and not separated consort, under-age children, a major child where the child is totally disabled and an over sixty-five parent, but only if there are no other children living in the country of origin or if they cannot take care of their over sixty-five parent. In default of appropriate documentation issued by an authority in the country of origin to certify the family relationship, a DNA test is required from the consular authorities at the applicant’s expense. The minimum income level required in order to qualify for reunion is equal to the annual social security benefit (5,142 Euro), plus an additional half of this amount (2,571 Euro) for every reunion relative. So, if an immigrant wants to reunite with a partner or child, they must have a minimum annual income of 10,285 Euro. These restrictions limit one of the few chances immigrants have to enter Italy regularly outside annual immigration quotas.

- **Illegal immigration offence:** The security package introduces an ‘illegal immigration offence’. If a foreigner enters or stays illegally in Italy, the punishment foreseen in the draft law (compulsory arrest, summary procedure and imprisonment for six months to four years) has been replaced in the final law with a fine of 5,000 to 10,000 Euro and deportation. The law contemplates the opening of a criminal case. Making irregular immigration a criminal offence has other implications. Under the Penal Code, civil servants are required to inform security authorities of all criminal offences that they become aware of during their activities (Article 361 and 362). This means that if a civil servant gains knowledge of the irregular state of a foreign citizen, he/she must notify the authorities. The first episodes of reporting by medical and school managers have already occurred. As a consequence, the right to education as well as to urgent medical care are

now threatened, whereas until a short time ago these rights were guaranteed to youngsters and citizens regardless of their residence status.

- **Detention:** Under the security package, the maximum detention period in Identification and Expulsion Centres (CIEs) has been extended from 60 to 180 days. However, this extension does not guarantee that expulsion will be carried out within this time. Expulsion can only be realised after identification of the detainee by the embassy of the country of origin. If this identification does not arrive within 60 days, it is unlikely that it will arrive in 180 days. The reintroduction of detention in CIEs for asylum seekers subject to expulsion measures because of residence irregularities and the reduction of their jurisdictional protection in the case of rejection of the asylum request are the most important novelties of the Asylum Decree no. 159/08.
- **Citizenship tax:** Under the security package, declarations of election, purchase, renunciation and concession of citizenship are subject to a contribution of 200 Euro. These contributions will be assigned to the Minister for Interior, who must use half for cooperation and collaboration projects on immigration with countries of origin.
- **Residence permit fee:** The security package sets a fee for the necessary papers for the issuing or renewal of a residence permit of between 80 and 200 Euro. This is in addition to the amount that foreigners already pay to apply for a residence permit (7,212 Euro).
- **Integration:** The security package provides that foreigners will sign, together with the residence permit, an 'integration agreement' committing to specific 'integration goals'. Precise standards and modalities for this have not yet been defined. Foreigners living legally in Italy for a long time can request a long-term resident permit, which is conditional upon passing an Italian language test. Italian or foreign citizens can also be asked to prove the suitability of their habitation to register or to change their address on the residence register (which is the source of the address recorded on the identity card). Most foreigners currently live in very poor housing conditions, so this will be an obstacle to the registration of births, marriages and deaths. Failing to produce an identity card and residence permit when asked will attract a penalty of one-year's detention and a fine of up to 2000 Euro.
- **Obstacles to remittance flows:** Under the security package, managers of money transfer services are required to photocopy the client's identity card and residence permit. If the client does not have a permit, managers must inform the local police within 12 hours, or lose their licence. Photocopied documents must be kept for 10

years. This measure will have a negative effect on remittance flows and, therefore, on immigrants' families at home.

- **Legalisation of vigilante groups or 'rounds':** The mayors, in agreement with the prefects, can make use of the collaboration of unarmed associated citizens to inform police about urban social security threats and 'social degradation' situations. The mayors must first use associations constituted by former members of the police or army. It is important to note that some of the present associations that begun to practise this kind of activity before the approval of the security package are managed by Right-wing groups or individuals involved in fascism apology acts. See the example of Gaetano Saya, leader of 'black rounds', investigated in 2004 for racist propaganda and arrested in 2005 for creating a kind of 'parallel' police force in the fight against terrorism sector of the Italian intelligence service. These kinds of people are not the appropriate people to protect our society.
- **Discrimination against Roma and Sinti:** Particularly discriminatory treatment has been applied to gypsies. The Decree of the Prime Minister of 21 May 2008 declared "the emergency state in regard to Roma and Sinti settlements in the areas of Campania, Lazio and Lombardia". Through some ordinances of the President of Council of Ministers (No. 3676 to 3678 of 30 May 2008), the prefects of Rome, Milan and Naples have been elected Managing Commissioners in order to deal with the "gypsy emergency". The ordinances provide for the monitoring of authorised camps and of the location of illegal camps, and for the taking of a census of gypsies living in camps involving fingerprinting – even of children.

Lega Nord and the Government majority succeeded in persuading most of the public that the so-called 'security package' and all the strict rules on immigration will lead to major security improvements for all Italians. As a matter of fact, the main effect has been an increase in intolerance towards foreigners, which has led to more racist acts and violence.

The choice to intervene in the legal condition of foreigners only through safety laws and measures sends an important symbolic message: that so-called 'insecurity' is due to the presence of foreigners, who, as they were born in another country, are inclined to criminality by nature. It is exactly this rhetoric, deliberately based on fear and the perception of foreigners as a threat, that allows such laws, so explicitly detrimental to the rights of migrants, to exist. That is not all; the political use of these laws to spread, much more explicitly than in the past, the idea that intolerance toward foreign citizens, discriminatory behaviour, and even racist violence have some *raison d'être*, is reprehensible. Indeed the discriminatory effects of some measures

contained in Law no.94/2009, which makes illegal immigration an offence, appeared even before the final approval of this law, highlighting how the interaction between the political/media discourse and the legislative activity leads to the social stigmatisation of foreign citizens. ■

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National Report of the Republic of Macedonia

With its aspirations for EU membership, Macedonia has made some efforts to address the specific needs of Roma and to ensure the protection of their rights. Trafficking is also a widespread problem in Macedonia, a problem that requires the involvement of both the Government and civil society to solve.

Keti Jandrijeska Jovanova

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Helsinki Committee for Human Rights of the Republic of Macedonia

The Roma community in Macedonia

Macedonia recognises the Romany people as a constitutional people, and the Roma settlement of Suto Orizari is the first Roma municipality in Europe.

In Macedonia there are about 55,000 Roma, which is about 2.6 per cent of the total population. The Roma are in a unique situation to other minorities within the country (State Statistical Office, 2009). As a result a more serious approach is needed to address the specific needs and problems that this ethnic community is facing. Currently, the majority of the Roma in Macedonia live on the verge of existence, enduring severe poverty in non-urbanised settlements and without proper education. In recognition of this situation, in February 2005, the heads of the governments of Bulgaria, Slovakia, Serbia, Hungary, Croatia, Montenegro and the Czech Republic launched the 'Decade of Roma Inclusion 2005–2015', thereby committing to work towards uprooting discrimination and overcoming the unacceptable gap between the Roma and the rest of society. The Decade of Roma Inclusion identifies a number of priority areas on which states need to concentrate: employment, housing, health care and education. In Macedonia, the Ministry of Labour and Social Policy was appointed to coordinate activities related to the Decade. In order to further these objectives, the Ministry established a National Coordinative Body.

The Strategy for the Roma in the Republic of Macedonia and the Decade of Roma Inclusion are the first steps towards ensuring the protection of the rights of the Roma, steps that have emerged from the country's aspirations for EU membership.

Employment

The Constitution of the Republic of Macedonia guarantees the right to a job, free choice of employment, protection at the place of business and material security during temporary unemployment. It also guarantees accessibility to every position under equal conditions. The law on employment and insurance in case of unemployment provides for different social measures, such as: increased opportunities for employment (right to training, etc.), cash

contributions in case of unemployment, health care and so forth.

However, the situation of the Roma people in reference to this issue is different. The high unemployment among the Roma, caused by lack of education, their non-competitiveness on the labour market and their inability to access information about opportunities for employment, are the main reasons for this situation.

According to the Employment Agency of the Republic of Macedonia, 32 per cent of Roma were registered as unemployed (17,672) in 2008, of whom 42 per cent (7,410) were women and 90 per cent (15,925) were unqualified. To cope with the situation, the 2007 Operative Plan for Employment envisaged active measures to increase their employment, which included the employment of Roma in the public sector, subventions for employing single mothers, the support of family businesses, and training and re-training schedules. However, there was only limited progress as, in 2007, only 50 Roma who applied for the subvention benefits were employed (Government of the Republic of Macedonia, 2009).

Housing

Roma settlements are usually on the periphery of towns in non-urbanised areas that lack basic facilities. The biggest settlements are in Skopje, Kumanovo, Prilep, Bitola and Stip. The conditions in which most of the Roma live are below the level of proper housing. As an example, in Suto Orizari, more than half of the families live in a community in which each family member lives within a two to five square metre space, on average; half of them have no facilities for personal hygiene (bathing, etc.); about 60 per cent use water in their homes and 40 per cent use pumps in their yards or in public areas; 15 per cent use improvised toilets; and 1.5 per cent have no water in their homes (Government of the Republic of Macedonia, 2009).

However, there are isolated efforts on a local level to provide Roma settlements with access to communal services and infrastructure. In 2007, the water supply and sewage system and the streets in the Municipality of Suto Orizari were renovated, and the preparation of the urban plans for the large Roma settlements in Prilep and Bitola is underway.

The Ministry of Transport and Communications provides a certain amount of social housing, but, unfortunately, there is no information as to whether

or not such housing is really accessible to the Roma. With the help of the World Bank and UN Habitat, the Ministry of Transport and Communications drafted a law to legalise buildings built illegally. This law is expected to improve the housing situation of the Roma.

Health care

The situation of health care among the Roma population has its particularities because of the convergence of various factors, such as their dire economic situation, low housing standard, insufficient hygiene, absence of health insurance, insufficient primary health care, low level of health education, culture and the cost of medical services, among others. Unfortunately, no special measures aimed at improving medical services for the Roma have been implemented. Furthermore, there have been no significant efforts by the Government to deal with the main problems, such as the exclusion of the Roma from access to health insurance and impediments to access to medical services resulting from the lack of personal identification documents. For these reasons, the Roma remain extremely poorly represented in health care institutions.

Education

Within the framework of the Roma Decade, an Educational Fund for the Roma was established. The aim of this Fund is to improve the sustainability of Roma education programmes by giving priority to non-segregated education.

The general education situation among the Roma is unsatisfactory, and illiteracy and low education levels contribute to poverty among the Roma in Macedonia. The Education Development Programme shows that the percentage of persons with no education or unfinished primary education on a national level is 14 per cent; the percentage of those with primary education is 35 per cent, which means that about half of the Roma population are either illiterate or half literate. Thus, the compulsory character of primary and secondary education as stipulated by law is not respected in reality (Ibid.).

The main reasons for this among the Roma population are the dire economic situation of most families, the non-regulated citizenship of a large number of Roma children, which makes their inclusion in the educational process difficult, the absence of pre-school education, insufficient knowledge of the Macedonian language and

inability to follow the programmes in Macedonian language, illiteracy of the parents, lack of motivation among children to attend school, frequent cases of marriages between minors, and segregation and discrimination at schools.

There are numerous examples of Roma children being enrolled in classes for children with mental disabilities due to their insufficient knowledge of the Macedonian language, even though they are perfectly healthy. Moreover, the Roma children are not accepted at school, i.e., the other students avoid sitting with them or socialising with them, some of the teachers do not spend enough time with them and various other types of discrimination.

Because of this worrying situation, it is necessary to prepare specific measures to stimulate and support the educational process, as well as various forms of assistance (for example free textbooks).

The Ministry of Education and Science has made an effort to increase the number of Roma students, with letters of recommendation to primary and secondary schools, and by increasing the quota for Roma at some universities. However, the problems in education have still not been comprehensively addressed, and the approach taken by competent institutions remains inadequate.

Antidiscrimination legislation

Equality and non-discrimination are the basic international norms regarding human rights. Human rights and protection from discrimination are especially important for the vulnerable, marginalised, and socially excluded individuals and groups. Hence, there is a need to adopt a legal framework for protection.

The Ministry of Labour and Social Policy has drafted an antidiscrimination law that prohibits discrimination on both racial and ethnic grounds. Nevertheless, even though the adoption of this law is necessary, in particular for the protection of the human rights of marginalised groups like the Roma community, it has not yet been adopted, even though it was supposed to be approved in September 2008.

Human trafficking in the Republic of Macedonia

Human trafficking, especially of women and children, is a widespread problem in the Republic of Macedonia. It is manifested in different forms and its goal is to exploit the victim in different ways.

The analysis carried out by the services of the Ministry of Interior shows that the victims of human trafficking in the Republic of Macedonia are usually girls or women coming from the countries of the former Soviet Union, who entered the country illegally or through well-established networks for the illegal transit of migrants. Apart from foreigners, in recent times, Macedonian citizens have also been registered as victims of trafficking. These are often minors who are solicited for prostitution, which increases

the probability of them falling into the human trafficking chain.

Domestic and international legislation

In 2001, the Government of the Republic of Macedonia adopted a decision to establish a National Commission to fight human trafficking and illegal migration. According to the decision, the National Commission's task is to monitor and analyse the situation of human trafficking and illegal migration and to coordinate the activities of competent institutions, such as international and non-governmental organisations, working in this area. In 2002, the Republic of Macedonia adopted a National Programme to fight human trafficking and illegal migration, which included a commitment to actively participate in the efforts of the international community in the fight against human trafficking as one of the most serious forms of organised crime.

In 2006, a National Strategy for Fighting Human Trafficking and Illegal Migration was drafted. The strategy establishes the directions and priorities for dealing with this type of crime. The plan includes prevention, identification, assistance, support and protection, as well as return and reintegration of the victims, proper criminal prosecution, international cooperation, the establishment of a single information system and informative propaganda with the purpose of influencing public opinion.

The Republic of Macedonia has prescribed and ratified many international instruments against human trafficking and the protection of human rights. After the signing and ratification of the Stabilisation and Association Agreement with the European Union in 2004, the Republic of Macedonia agreed to harmonise its legislation for the purpose of combating organised crime and human trafficking more efficiently. The agreement with the European Union led to a number of reforms of the Criminal Code in the areas of the smuggling of migrants, human trafficking, trafficking of minors, sexual abuse and witness protection.

Progress is needed

Despite the progress made in standardising legislation within the framework of the EU, the internal legal order in this area needs further amendment in order to operationalise these solutions. Even though a lot has been done in the last few years in the field of protection of the victims of human trafficking, the main problems remain, i.e., insufficient education of the potential victims of human trafficking and lack of prevention of this crime.

More effort should be invested in education and training on the topic of human trafficking, specifically by introducing certain topics related to this phenomenon in the regular curriculum of schools and universities. Education and training should be systematic, as a continuous process is the only way to achieve satisfactory results.

Furthermore, success in fighting human traf-

ficking and illegal migration is related to specialised and targeted education of the groups most directly involved in the process. These groups include police officers, public prosecutors, judges, lawyers, prison staff, social workers, medical staff, educators, diplomatic-consular officials, military officers participating in military missions, members of NGOs, media representatives, and professionals taking care of and helping victims of human trafficking. The focus of their actions in the field of education must be on raising awareness about the seriousness of the problem and its damaging consequences, as well as how it can be prevented.

Additionally, the seriousness of the problem requires the urgent ratification and implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, which was signed by the Republic of Macedonia on 17 December 2005. ■

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Immigrants in Malta

The high number of migrants in Malta poses a real challenge, especially as xenophobia and human rights infringements are increasing. To address this, Malta needs to review its automatic detention policy for ‘irregular’ migrants.

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Irregular immigration

In the last few years, Malta has witnessed a considerable increase in irregular immigration. The irregular immigration phenomenon in Malta started in 2001 with the arrival of 1,686 asylum seekers; in 2008, 2,775 boat people were registered as irregular immigrants in Malta. Most of these immigrants are from Sub-Saharan Africa, attempting to emigrate to Europe. Malta is a densely populated island country, with 1,282 inhabitants per square kilometre. It is at the crossroads of the Mediterranean, making it one of the main routes for ‘boat people’ from North Africa headed to mainland Europe.

Upon joining the EU, Malta became subject to the Dublin Convention, which provides that asylum seekers must remain in the country where they land. Thus, all boat people passing through the Maltese search and rescue area are referred back to Malta.

Dealing with the high number of migrants is a challenge for Maltese authorities and has caused the Maltese people to become increasingly insular and xenophobic. Malta has asked for aid from the EU and for the immigration burden to be more fairly shared. Malta deals with the immigration problem by systematically detaining all migrants and asylum seekers. In the last few years, the island has introduced asylum legislation (Refugee Act 2000) and reinforced its immigration legislation in line with the criteria for admission to the EU. Since 2005, the Reception Conditions Directive has been integrated into national policy and the EU authorities have become increasingly concerned about the welfare of vulnerable persons held in open and closed centres (Policy Paper 2005).

Detention

Malta has maintained its automatic detention policy for irregular migrants. On arrival, irregular migrants are held in closed detention centres for up to 18 months, after which they are transferred to open centres. This policy clearly violates international human rights laws and standards. Migrants are detained before proper medical screening, potentially putting the health of other detainees and staff at risk. NGOs and journalists have limited and restricted access to detention centres. Four of the administrative detention centres are in a deplorable

condition and fail to meet legally binding international standards.

Detention centres are overcrowded, with the overflow of immigrants living in tents. Detainees are managed by army and police officials, who are responsible for security, accommodation, meeting basic needs, providing access to medical care and day-to-day administration. These soldiers are not trained to look after people, and are clearly not the right people to be entrusted with this task. A report drawn up by the French NGO Médecins du Monde (MdM) in 2007 criticised the living conditions in Malta’s overcrowded closed detention centres as “detrimental” and “incompatible with a minimal respect for human rights” (MdM, 2007).

A United Nations Working Group on Arbitrary Detention that visited Malta in January 2009 described the conditions at the Safi and Lyster Barracks camps as “appalling” and detrimental to the health of those confined there (Malta Independent, 2009). They also pointed out that asylum applications take far too long to be processed: some migrants are still waiting to be interviewed on their applications after six months in Malta. The so-called ‘fast track’ system is not much better: it is intended for the most vulnerable people, but it still takes up to three months to release these individuals from detention centres.

In 2008 and during the first five months of 2009 a record number of boat people arrived in Malta (Frontexwatch, 2009). Médecins sans Frontières (MSF) suspended its humanitarian services at the detention centres on 13 March 2009 because the conditions were so appalling and inhuman (MSF, 2009). MSF Malta complained of poor sanitary conditions and a lack of facilities in many of the detention centres, including hot water and clothes. The assessment of migrants in vulnerable condition (the young and pregnant women) was taking far too long. People who arrived in a good state of health were deteriorating while in detention. The absence of a pharmacy in centres meant that medicines prescribed to immigrants were not delivered on time, or at all, making adequate and effective treatment impossible. The lack of a proper isolation area means that immigrants with infectious diseases are being kept with healthy individuals. MSF has advised the Government of the critical situation and requested that measures be taken since October 2008. While acknowledging that Malta needs EU help to cope, MSF insisted that Malta do its part by adhering to international and EU basic reception standards for immigrants.

Malta is a signatory to various UN and international conventions respecting the dignity of refugees and asylum seekers and has a national code of conduct issued by the Ministry for Justice and Home Affairs on the entitlements, responsibilities and obligations of detainees. Various reports on the state of Maltese detention centres categorise Malta as a backward third world country where human rights and human dignity and respect have not yet been discovered!

Government response

The Maltese Government needs to achieve a balance between security and humanitarian concerns, taking into consideration the rights of asylum seekers. Efforts are being made to improve conditions; however, the number of migrants is continuously increasing: in 2008, there were 2,775 new arrivals, compared to 1,702 the year before.

Declaring that its resources are over-extended, Malta has called upon the international community to help tackle its refugee problem through burden sharing and resettlement schemes. The EU, which is the real magnet for those fleeing Africa, needs to develop a consistent response. Malta’s request for assistance is not to be construed as an abdication of its international obligations, but as an expression of a genuine need for short-term help. Such assistance is not viewed as a permanent solution, which Malta recognises can only be found within the framework of a long-term approach addressing the root causes of emigration from Africa. The Maltese Government comments that illegal immigration is a problem that should be shared by the world as a whole. It is worth noting that such appeals are being made by the EU and UN delegations visiting Malta, to little effect (DOI, 2009). It is time to translate them into practice.

Justice Commissioner Jacques Barrot reiterated that the island had been allocated over €126 million in funds to spend from 2007 to 2013 in the field of asylum, immigration and borders. Barrot criticised Malta for spending only €18 million (Malta Today, 2009b). According to estimates published in the local media, Malta was allocated €24.4 million in 2007; €32.5 in 2008 and €18 million for each year until 2013, plus other entitlements and grants.

Malta should utilise EU aid to eradicate hardship and ensure respect for human rights and the dignity of immigrants.

Social assistance to refugees

The Government of Malta offers asylum seekers and refugees free accommodation in open centres,

as well as an allowance for food and transport for unemployed immigrants. Services and the duration of the period for which services are offered are regulated by an 'integration and service agreement' or a 'return and service agreement'. Refugees are given social security benefits and are also assisted with a rent subsidy.

Since January 2007, the daily allowance for unemployed refugees in open centres varies according to their status. A person with temporary humanitarian protection is given €4.65, an asylum seeker awaiting a reply from the Refugee Commission receives €4.65, and a rejected asylum seeker receives €3.5. Couples with children receive €2.33 for every child. Those with refugee status receive weekly social security benefits, which amount to €81.20 plus €8.14 for every dependant. Both refugees and individuals with temporary humanitarian protection are entitled to work after being issued a work permit by the Employment Licence Unit, valid for one year. Upon employment, all social security benefits and allowances are stopped. All allowances given in the open centres, as well as social security benefits and rent subsidies to refugees, are taken from the government budget. All immigrants, irrespective of their status, are entitled to free health care.

In April 2009, there were changes to these rules. The Employment Training Corporation stopped renewing work permits for asylum seekers whose applications had been rejected twice (Vassallo, 2009). OAIWAS, the government agency for the integration of migrants that coordinates open centres, began to encourage rejected asylum seekers to leave the open accommodation centres. Since April 2009, permission to remain in open centres is limited to a maximum of six months, after which all existing benefits – including the per diem allowance – are automatically suspended. Before this policy change, failed asylum seekers could reside in an open centre after their period of mandatory detention, and were also eligible to receive a 'per diem' allowance.

It should be noted that, if not supplemented by charity organisations, asylum seekers and rejected asylum seekers living on allowances are on par or worse off than people living on 'two dollars a day' in a developing country. Under the new policy, failed asylum seekers can no longer renew their work permits, and, hence, are unable to obtain the basics for survival.

Turning immigrants into criminal offenders

The changes in policy will automatically transform all undocumented migrants into criminal offenders in order to survive. The new policy is inhumane and will create an environment for racism to soar in Malta. Although rejected asylum seekers do not have any legal right to remain in Malta, there are some who cannot be returned home, in spite of the fact that they are not granted legal protection; these people should be provided with their basic needs and the means to live with human dignity.

BOX 7: Detention – Violating human rights

To deprive people of their liberty through detention, when they have committed no serious crime, is a very serious measure in a democratic society. Although human rights law allows for detention in very specific cases, detaining people for 18 months is a very long time and can destroy detainees both physically and mentally. An Eritrean migrant, Mr Berhe, filed a constitutional case against the Principal Immigration Officer and the Justice and Home Affairs Minister in May 2007, claiming violation of Article 34 of the Constitution of Malta and Article 5 of the European Convention on Human Rights (part of Maltese Law) due to the lengthy procedures for asylum and inhumane conditions of detention, including crowded conditions, lack of appropriate hygiene and medical care, and lack of access to legal services. Mr Berhe is still awaiting a verdict. Judicial proceedings started two years ago and have been postponed from time to time.¹

¹ Information on the Court hearing is available from: <www2.justice.gov.mt/kawzi/ccm_sitt.asp?FrmCM=213021&lng=>

The growing number of migrants settling in distinct areas and the new measures to cut all forms of help will create 'ghetto-isation'. These ghettos are poverty traps and breeding grounds for social tension. The Government should use EU aid to help immigrants to live a decent respectable life during this difficult stage in their life.

Maltese nationals and immigrants: The perception of immigrants

The issue of undocumented migrants has recently been at the core of media and political debate. Most of the Maltese public and political parties look upon 'boat people' as a burden and, as such, they are unwanted by the local population. This has made irregular immigration in Malta a hot political issue, leading to the formation of a number of Right-wing parties that are opposed to providing asylum to these individuals.

A survey carried out by a local paper revealed that immigration levels have reached crisis point, with thousands of migrants arriving, but only a few leaving. Since March 2002, there have been around 12,500 arrivals of irregular migrants. Malta repatriated 2,958 immigrants between January 2004 and September 2008. Experts like Martin Scicluna, a government advisor on this issue, contend that, in total, over 7,000 immigrants have departed, either through repatriation or of their own accord (Malta Today, 2009a).

The survey also revealed that 75 per cent of Maltese have no contact with illegal immigrants. Only 25 per cent reported ever having spoken to an illegal immigrant. Asked how the authorities should respond to a distress call from a drowning boat full of illegal immigrants, 4.3 per cent brutally replied that the authorities should take no action and let the immigrants drown. A further 55.3 per cent replied that the authorities should offer their help on the high seas and allow the migrants to proceed on their journey – which is illegal under international law. Another 38 per cent replied that Malta should bring the migrants to Maltese shores to offer them assistance.

Malta is a Roman Catholic country that talks about solidarity and the Maltese people pride themselves on how they welcome people. It has been

eight years since the immigration crisis began, but it is only lately that leaders of the Church have started to visit detention centres and voice their concern. In a homily by Gozo Bishop Mario Grech on 4 April 2009, he sharply criticised the detention policy for migrants, whose only crime is escaping persecution in their own countries. He stated that it is unfortunate that a:

civilized country such as ours, having the values we think we are defined by, sees nothing wrong in keeping locked in detention women and men who committed no crime and who are only here because they are seeking another country's protection? (Grech, 2009).

One has to give credit to the Maltese Church, which has been working through different organisations such as the Secretariat of Emigration and Tourism, the Jesuit Refugee Service, Suret il-Bniedem and the Good Shepherd Nuns, among others, to assist refugees and immigrants.

The Maltese people must be educated to be more tolerant towards asylum seekers and to better understand their situation, while the Maltese Government must respect immigrants' human rights. The Government should accept that immigration is a long-term situation. Malta must make better use of the aid given by the EU and organise a humane reception for incoming people until such time as they are accepted by other countries, or the situation changes for the better. The EU must recognise the fact that Malta is by far the Member State that is bearing the heaviest burden relative to its size and resources. Member States should show solidarity with Malta and share the responsibility of asylum seekers by accepting them in their own countries and working towards eradicating poverty and establishing governance in the impoverished nations that these people are coming from. The EU must also work towards a more just world where natural resources, international trade and wealth are shared in a more humanitarian and equal way. ■

(continued on page 78)

Migration and the Republic of Moldova

Migration has economic, social, demographic, cultural, security and environmental effects on both sending and receiving societies. Moldovans started to emigrate soon after the country proclaimed its independence in 1991, but emigration (especially labour emigration) peaked in the late 1990s following a severe economic crisis.

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Falling economy

Moldova's economy is strongly driven by remittances. The number of Moldovans working abroad increased from some 56,000 in 1999 to 340,000 in 2007 (from a population of 3.8 million in 2007). Total remittances were USD 1.5 billion in 2007 (36% of Moldova's GDP) and were growing in the first half of 2008 prior to the global economic crisis (Maddock & Ramguttee, 2008).

According to the World Bank's new Migration and Remittances Factbook 2008, Moldova is the world's top receiver of migrant remittances as a percentage share of GDP. Hence, Moldova is the world's most remittance-dependent country.

Most of this migration is temporary, according to an International Organization for Migration (IOM) survey, with only 14 per cent of migrants planning to settle abroad permanently. Roughly 52 per cent of labour emigrants engage in seasonal work, most in countries of the Commonwealth of Independent States (CIS). By comparison, those who choose to emigrate to the EU, e.g., Italy, Portugal and the United Kingdom, due to the risk and high cost involved in illegal travel, leave Moldova for extended periods and a significant number intend to settle abroad (23%). As a result of the increasing outflow, remittances have become one of the most important sources of income for many Moldovan households, while also financing the country's trade account deficit (IOM, 2008).

Remittances have a huge social impact on families, communities and civil society. At the political level, migrants are not yet represented, but remittances are a source of financing for numerous political parties. It is not clear whether or not the short-term economic benefits of migration will outweigh the long-term social and political disadvantages. Until recently, remittances generated higher household incomes, but were rarely invested (IOM, 2008). However, International Monetary Fund analysts suggest that there has been a change in the consumption pattern over the last decade and more remittances are being directed into private investment. This could lead to more durable development in a transition country relying mainly on remittances to solve its economic problems (DSI Viitorul, 2008).

The suspension of remittances due to the global economic crisis will dramatically affect internal consumption in Moldova and the number of people living below the poverty level is likely to increase. Falls in remittances and the large-scale return of migrants could increase economic pressure in Moldova. The effects of falling remittances are likely to be felt nationwide, but, as migration in Moldova is principally from rural areas, it seems probable that these effects will be felt disproportionately in rural and urban areas. If so, there is the prospect of an increase in rural poverty. This was already a concern in Moldova, despite good growth performance between 1999 and 2004, which moved 40 per cent of the population out of poverty. Nonetheless, about 26 per cent of the Moldovan population in 2007 remained poor, with about two-thirds of the poor living in rural areas. A similarly rural concentration of impacts among returning migrants is likely if there is a disproportionate return to rural areas.

A disproportionate deterioration in youth unemployment is also possible. While youth unemployment is comparatively low in Moldova, this is partly due to the export of labour in the form of migrants. With opportunities for migration diminishing, young people will be forced to rely on domestic labour markets at a time of falling labour demand. Youth will have to compete with returned migrants, who may return with better skills and more experience. In other words, a generation of 'frustrated migrants' is likely to be created among the young, at the same time as competition is increasing in domestic labour markets. As a result, the possibility for social unrest is evident.

However, there may be some benefits. According to the Academy of Sciences of Moldova (ASM), decreased remittances as a result of the global economic crisis, "can also have positive effects [and] will inevitably lead to imports reduction, and that in its turn will stimulate the increase of real economy in order to fill in the vacuum of products on the internal market".

The ASM also concludes that a reduction in remittances will have the following impacts:

- The real sector of the economy will be affected, increasing the vulnerability of small enterprises and the agriculture sector, and, as a result, unemployment will increase.
- The national currency may devalue; in this context, a substantial increase in demand for strong

currency has already manifested on the currency market.

- The depreciation of the Leu may also have positive effects, such as a reduction in imports and the favouring of exports.
- An increase in exports may also precipitate an increase in local goods quality to conform to European standards.
- Budget revenue will decrease as well as the purchasing power of the population.

However, the ASM goes on to point out that the global economic crisis may not invoke a massive return of migrants, as the majority of Moldovan migrants are employed in activities that are unattractive to the population of receiving countries.

Migration: A problem or solution

Migration affects both men and women, although the social, economic and demographic impact of women working abroad is becoming more and more obvious in Moldovan society. The proportion of women in migration flows is increasing. In 2004, women accounted for 34 per cent of all emigrants; this increased to 41 per cent in 2006. Emigrant women account for about 35 per cent of Moldova's female workforce, which represents a significant portion of the total labour force. The fact that this portion has left the domestic labour market generates a shortage of human resources in sectors traditionally dominated by women (education, health, agriculture).

Most emigrant women are aged between 30 and 40 years, and are mainly from rural areas. Most are, or have been, married and have children; therefore, their departure disrupts family life, especially the rearing of children. About 60 per cent of women stay in the countries of destination longer than 1.5 years.

Thus, the emigration of women not only diminishes the size of the labour force employed in the national economy, it also diminishes the number of women of reproductive age in Moldova. Emigration, even temporary or seasonal, minimises the possibility of such women having children. Moreover, being abroad for several years, many women are tempted to settle permanently in their receiving country and even get married there. When women are integrated into the society of the receiving country through marriage, they gain access to certain information

and services, and are thus able to provide important support for new migrants.

Illegally migrated women face an increased risk of morbidity, but are unable to access health-care services or the services of specialised NGOs. Their illegal status enhances their dependence on their employer, increasing the risk of forced sexual relations. The emigration of women also plays an important part in Moldova's divorce rate, which has been increasing since 1999.

Women's emigration represents a wide range of social and economic problems that, in the long term, will have significant consequences on the demographical structure and social relationships in Moldova. A great proportion of children are now being brought up in a new Moldovan family model – the family with emigrated parents – their socialisation framework being essentially modified.

Migration inevitably rearranges gender roles. In families where both parents are at home, the care provider role is played either by both the father and the mother (in 53% of families surveyed), or just the mother (in 32% of families surveyed). When the mother leaves, her role is often taken by the father or another female household member (Peleah, 2007). Most of the children whose mothers migrate (68%), no longer see them as care providers.

As labour migration from Moldova is generally a product of economic factors, migrants are often perceived by family members as the main providers. Interestingly, in both migrant and non-migrant cases, the proportion of dual-earning families is quite high (close to 45%). In families in which the father has migrated, the father is more likely to be perceived as the main breadwinner (in 47% of cases, compared to 31% in families without migrants). Likewise, the mother is less likely to be perceived as the main breadwinner (down to 6%, compared to 13% in families without migrants). Mothers are mentioned as the main providers in 45 per cent of families where the mother is absent – a sharp increase on the 13 per cent reported in non-migrant families. Both the father and mother are perceived as important breadwinners in 46 per cent of families in which mothers have migrated.

Women working abroad are more self-confident and have more self-esteem. While violence against women is widespread in Moldova, women who have worked abroad seem less willing to tolerate abuse by their partners. Instead, they seem more likely to insist that abusive partners change their behaviour; if not, they are more likely to divorce and try to rebuild their lives.

The migration of mothers seems to have a much larger negative impact on childcare than the migration of fathers. The survey data suggest that in 14 per cent of families with mother-migrants, children believe that no one is taking care of them (compared to only 3% for families with only the father abroad). Similar problems are evident in other areas of family life in which women traditionally play signif-

icant roles (education, homework, taking children to the doctor, and supervising children during leisure time).

Changes in gender roles can influence communities as well as families. Many respondents suggested that women's migration gives them financial independence and increases decision-making power. They also noted that migrant women increasingly model themselves on the behaviour of women in the receiving country. A wife's departure to work abroad may be perceived as threatening by her husband, particularly in view of paternalistic expectations in Moldovan society. She will earn more and may try to manage this income herself. This can threaten the husband's status as head of the family; he may look for a new partner or may seek comfort in alcohol. In cases where women's work abroad is associated with prostitution, women's migration may bring stigma on themselves and their families. Migration – particularly of mothers – may lead to the 'disappearance' of certain family roles. This is especially dangerous if it has a long-term impact on children's development and wellbeing.

Another major risk faced by women, especially young women, who attempt to migrate illegally is their exposure to trafficking for sexual exploitation, which has destructive effects on their physical and psychological health and future social relationships. So far, the organisations that specialise in assisting trafficked victims have assisted over 2000 female victims from Moldova, most of them in need of psychological and medical assistance (La Strada Informational Centre, 2005).

Another problem associated with migration is the 'brain drain'. Despite numerous, and often humiliating, restrictions on Moldovans entering many destination countries, the qualified Moldovan workforce continues to look for opportunities abroad. This creates significant shortages of qualified labour (e.g., doctors and engineers) in the domestic labour market.

Migration has both positive and negative effects on communities and families. Intervention is needed at the governmental level to decrease the negative social impacts of migration. Measures may include the promotion of circular migration, which allows migrants to learn from their experiences abroad while stimulating their return, for example, through fiscal facilities and institutional guarantees of work or scholarships. ■

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Migration and Development in the Netherlands

Despite the significant contribution of immigrants to Dutch society, economically, politically and culturally, the anti-immigrant mood and the influence of diasporas reveal that migration and integration are still contentious issues.

Ton van Naerssen¹

The population of the Netherlands numbers around 16.5 million. Of these, some 3.3 million or 20 per cent are considered *allochtonen*. This specific Dutch notion is sometimes wrongly translated as aliens, immigrants or foreigners, but in fact means that the person, or one of the person's parents, was born outside the Netherlands, regardless of whether this person has Dutch nationality or not. Dutch people born in the Netherlands are called *autochtonen*, which means indigenous or native. A distinction is also made between Western and non-Western immigrants.

During the period 1995 to 2007, the number of people migrating to the Netherlands annually varied between 90,000 (2004) and 133,000 (2001). In 2008, there was a record 140,000 immigrants. In particular, the number of labour migrants from Poland, Bulgaria and Rumania increased, while less people came from the traditional migrant countries such as Turkey, Morocco, Surinam and the Dutch Antilles. Also, the major reason for migrating to the Netherlands changed from 'family reunion' to 'labour'. Another trend is the decrease in the share of asylum seekers, which dropped from 30 per cent of immigrants in 2000 to less than 5 per cent in 2007. In the period 2000 to 2007 their absolute number reached 41,500; most came from Iraq (12,400), Somalia (6,600) and Afghanistan (4,600).

The *Immigratie – en Naturalisatie Dienst* (IND) is the implementation agency that decides on residence permits and Dutch citizenship. Currently, some 20 per cent of asylum seekers obtain a temporary permit to stay. The Aliens Act of 2001 (*de Vreemdelingen Wet*) provides for residence permits to be valid for one year only. The permit can be extended twice, after which the immigrant can apply for a permanent residence permit. If a permanent residence permit is not granted, the asylum seeker will lose his/her accommodation, as offered by the Dutch local authorities, and must leave the country. If the asylum seeker stays illegally and is held by the police twice, they are considered an 'unwanted' person and could be jailed for six months. The Act also contains strict income requirements for family reunification. This particularly affects second and third generation

descendants of Turkish and Moroccan migrants. Many are accustomed to marrying a partner from their country of origin, but face difficulty in meeting the financial requirements due to their difficult position in the labour market.

In 2005, the Government introduced the Act of Integration Abroad (*Wet Inburgering in het Buitenland*), which requires immigrants to pass a 'civic integration exam' on Dutch language and society before being allowed to enter the country. This Act is a tool to curb family formation and reunion, and is discriminatory in its application as foreign nationals from 'Western' countries are exempt. With the introduction of the Integration Act of 2006 (*Wet Inburgering*), all foreign nationals resident in the Netherlands, with the exception of EU, European Economic Space (EES) and Swiss citizens, are required to pass an integration exam. The exam also applies to foreign nationals (permanently) resident in the Netherlands prior to the introduction of the law. Those who do not pass the exam are not eligible for a permanent residence permit.

Impact on Dutch society and integration

The impact of immigrants on Dutch society is considerable. Their contribution to the economy is not limited to low-qualified labour, as the number of highly-qualified and educated *allochtonen* has increased. Ethnic entrepreneurship is also on the rise (see Box 8). Culturally, the Dutch entertainment industry and literature are unthinkable without migrants. *Allochtonen* are also increasingly politically involved and represented in local, regional and national governments. However, their overrepresentation in low paid occupations and high unemployment levels continue to be problematic. In 2008, the unemployment rate among non-Western *allochtonen* was 9.0 per cent, three times higher than *autochtonen*.

In 2006, the Social and Cultural Plan Bureau (SCPB) warned of the one-sided attention given to the social-cultural integration of *allochtonen* at the cost of their labour market position. It did so because of a change in the immigration and integration discourse during the past decade. Previously, the dominant idea was that of a society with ethnic minorities maintaining their cultures and languages. The discussion focused on their rights and access to the labour market. In the nineties, a gradual shift took place towards an emphasis on the duties of the individual migrant. Minorities' policies were replaced by integration policies. The arrears of *allochtonen* were seen as a consequence of the deviation of their

culture from the mainstream values and norms of Dutch society.

Since the turn of the century, public opinion has considered the integration of *allochtonen* into Dutch society as a failure, and discontent has grown rapidly. This is reflected in the rise of politician Pim Fortuyn, leader of an extreme anti-immigrant party. Fortuyn wanted to stop immigration and described Islam as a 'backward culture'. He was murdered in 2003, but the tone was set. When Rita Verdonk of the Liberal Party (VVD) became Minister for Aliens Policy and Integration, she acted as a strong politician with clear-cut messages: less immigration and the stronger cultural integration of *allochtonen*. After Verdonk, a new coalition between the Christian Democrats (CDA) and the Labour Party (PvdA) in 2007 brought more tranquillity. Nebahat Albayrak, State Secretary at the Ministry of Justice and responsible for aliens policy, took measures to assure more meticulous asylum procedures and supported the Dutch municipalities to develop local asylum policies.

However, migration and integration are still contentious issues. Geert Wilders, the Dutch parliamentarian and leader of the Party for Freedom (PVV) attracted attention with his anti-Islam movie *Fitna*. Wilders wants to forbid the Koran, which he compares to *Mein Kampf*. According to polls in March 2009, if national elections were to be held now, the Party for Freedom would obtain 20 per cent of the Dutch vote and become the largest party in the Parliament. With this in mind, policymakers from the traditional parties (Christian Democrats and Liberal Party) declared that they would consider the possibility of forming a coalition with the Party for Freedom. Even the Labour Party made a shift to favour a strict integration policy.

Dutch identity, populism and new nationalism

According to a survey by the Social and Cultural Plan Bureau, in April 2009 some 35 per cent of the population hold the view that the Netherlands would be a more pleasant country if there were less immigrants. Around 40 per cent consider the presence of different cultures as of benefit to the country. Taking into account the capriciousness of public opinion, it would be reasonable to conclude that pro- and anti-immigrant groups more or less balance each other in Dutch society.

The public discourse and political debates, however, suggest that there is a rising anti-im-

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migrant mood, which is accompanied by populist policies and a strong tendency to define a Dutch national identity. Pim Fortuyn gained political support with populist slogans such as 'I say what I think' and 'At your service', meaning that, contrary to the politicians in power, he was listening to the silent majority. In 2008, Rita Verdonk called her movement 'Proud of the Netherlands' and initially obtained much support. She was outdone by Geert Wilders, whose Party for Freedom movement purports to stand up for the 'real Dutch'.

In its worst form, the new nationalism expresses itself through populist slogans depicting 'multiculturalists' as fascists and by denouncing Islam. In its more civilised form, the new nationalism is defining the integration issue as a cultural issue. It underscores a desire to strengthen the 'Dutch identity'.

Part of the new nationalism can be explained by the fact that the Netherlands used to be a strongly pillarized society, wherein the position of each individual was defined by its membership of a religion or a secular political ideology. Since the sixties, as in other West-European countries, this closed system evolved into a more open one. Dutch society developed into a permissive one. It now allows for diversity in values, attitudes and behaviours. There is broad acceptance of, among others, outside marriage couples, divorce, homosexuality, abortion and soft drugs. It is precisely this liberation that conflicts with the closer social systems in which many migrants are brought up. Paradoxically, this has reinforced a rather static idea of Dutch culture and society. What

the proponents of the Dutch identity refuse to see is that people have multiple identities and that national identities are not fixed in time and space.

Diasporas and development in countries of origin

Migrants contribute to social and economic development in their countries of settlement and, increasingly, to development in their countries of origin as well. Due to improved means of communication and transport, bonds with people 'at home' are increasingly maintained. Family remittances are by far the major economic contribution made by migrants, but other forms of transfer have a development impact too. For example, migrant entrepreneurship is often transnational and linked to the country of origin (see Box 8). Migrants can also be involved in knowledge transfer, development cooperation projects and even peace building initiatives.

Migrant communities usually have their own home country or diaspora organisations whose main aims are to support countrymen in the process of adaptation to the specific circumstances in the country of (temporary) settlement and with integration into the new society. Such organisations often support small-scale development projects in their home countries as well. Migrant communities have networks that extend beyond national boundaries. They have access to specific knowledge, cultural knowledge and language skills that can be used for development cooperation in home countries. Their resources can even span several generations.

For the past few years, the official Dutch development institutions have been aware of the potential of the various diasporas. The Dutch Ministry of Foreign Affairs in its 2008 Memorandum on Migration and Development mentions six policy priorities of its migration and development programme. These are:

1. More attention to migration in development dialogues, and vice versa
2. Institutional development in the area of migration management
3. Encouragement of circular migration/'brain gain' with an emphasis on labour migration
4. Strengthening of involvement of migrant organisations
5. Strengthening of the linkage between migrant remittances and development
6. Promotion of sustainable return (and re-integration)

In the dialogue between the Ministry of Foreign Affairs and the diaspora are partners as various as the African Diaspora Policy Centre (bridging African diaspora and policymakers at the EU level), the Global Society Foundation (capacity building of diaspora organisations) and the SEVA Network Foundation (development activities based on Hindu philosophy). Experience gained so far proves that the success of all programmes implemented by the Dutch Government, international organisations and

diaspora organisations, depends on the legitimacy of the diasporas to speak on behalf of the people 'at home' and the capacity and reliability of partner organisations in the countries of origin. ■

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BOX 8: Transnational migrant business

A few years ago, Ms Karima Q had a dress shop in Arnhem, a town in the eastern part of the Netherlands with 145,000 inhabitants. As she had no experience in the clothing industry, she connected with her network in Turkey. Two great-nephews were willing to teach her how to import and purchase clothes. They also introduced her to firms in Izmir and Istanbul. There she became acquainted with the owners of a 'good shop' similar to what she had in mind. They put her in contact with the wholesaler with whom she now cooperates and who informed her about colleagues in the Netherlands. Karima now has a transnational business that contributes to economic development in the Netherlands as well as Turkey. She is one of the many non-Western entrepreneurs in the Netherlands, whose number has substantially increased from 21,000 in 1994 to 58,000 in 2006, a growth rate that is higher than among native Dutch. Non-western entrepreneurs are strongly represented in sectors such as groceries, textiles and clothing, and telecommunications. Around 40 per cent have their businesses in Randstad Holland, where the largest number of migrants live.

Poland: A Migration Crossroad

After EU accession, Poland became the Union's Eastern border, attracting a new wave of immigrants while at the same time providing better access to Western markets for Polish workers.

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Immigration to Poland

Contemporary Poland has one of the lowest percentages of foreigners as a proportion of the total population (Kaczmarczyk, 2006). The still very small, but rapidly growing, number of immigrants is creating a new situation in Polish society and for the economy. The main immigrant groups include migrants from the post-Soviet Bloc countries, migrants from East Asia and Westerners working for multinational companies, who are mainly concentrated in large metropolitan areas.

Illegal migration

There are no studies, statistics or data concerning illegal migrants residing in Poland. Polish authorities have not yet developed a common policy to tackle this phenomenon. However, illegal migration seems to be coming more and more visible and important for the society and economy. The total number of illegal migrants in Poland is unknown. According to various sources it varies from 50 to 500 thousand¹.

According to the law, a person who resides illegally in Poland does not commit a crime, but only a minor offence and is liable to a fine. Consequently, the person may be placed under arrest for the purpose of expulsion or in a guarded centre. The same applies to an alien who attempts or crosses the border illegally.

Poland has not yet transposed the so-called 'Return Directive'², which is main EU instrument dealing with illegal migrants, into law. The 18 month detention period introduced by this Directive will probably not be transposed by the Polish authorities³. Present law states that an alien could be detained

for up to a year and then must be released from the guarded centre or arrested for the purpose of expulsion.

Citizenship

A foreign citizen – regardless of whether or not he/she comes from the EU or a non-EU country – may be granted Polish citizenship provided that he/she has been residing in Poland for at least five years on the basis of leave to settle in Poland or a permit as a long-term resident of the European Community or as someone who has been granted a permanent residence permit to live in Poland.

A person who has no citizenship or whose citizenship is undetermined can be recognised as a Polish citizen if that person has been residing in Poland on the basis of leave to settle in Poland or a permit as a long-term resident of the European Community for at least five years.

Polish citizenship may also be granted to a foreigner who has been married to a Polish citizen for at least three years, who was granted leave to settle in Poland or a permit as a long-term resident of the European Community or who was granted a permanent residence permit to live in Poland.

Refugees and foreigners who were granted subsidiary protection or tolerated stay, in order to acquire Polish citizenship, must first obtain one of the above mentioned titles of legal stay in Poland, which are also granted under the condition of residing in Poland for several years. This means that a foreigner whose intention is to settle in Poland, work and have a family there, is obliged to wait for many years (10 years for foreigners who obtained refugee status or subsidiary protection, and 15 years for foreigners who are granted tolerated stay) in order to become a Polish citizen. There is a real need to shorten these periods.

In special cases citizenship may also be granted by the President of Poland, however, this is not very common.

Economic migration

Economic migration to Poland is a relatively new phenomenon. Democratic changes, EU accession, economic growth, and better social and living conditions are increasing the number of migrants who want to stay and work in Poland.

Around 10,000 work permits are issued every year, half to people from former Soviet Bloc Republics (Kaczmarczyk & Okólski, 2008, p.53). Citizens from the Ukraine, Belarus and the Russian Federation

are the main groups legally employed by Polish companies. They are mostly working as low-skilled workers in the industrial and rural sectors (i.e., in mining, energy production and agriculture). Poland is also an immigration destination for workers from the East Asian region. Since the 1980s, Poland has had a large Vietnamese community, controlling a sizeable part of the import and retail of inexpensive goods from East Asia, especially clothes.

Until recently, large numbers of immigrants were employed illegally during the summer season. However, the law has changed to allow foreigners to be employed for short periods in all sectors of the economy. The number of foreigners legally employed is rather low and depends on, among other things, Poland's economic situation. The global economic crisis has resulted in higher unemployment and lower demand for manpower. As a consequence, fewer employers are willing to offer jobs to non-Poles, even more so as the procedures for employing foreigners are complicated, time consuming and costly. Due to their relatively small number, legally employed migrants do not play an important role in the national economy.

The Polish legal system contains antidiscrimination regulations with detailed provisions in relation to employment, the EU antidiscrimination laws have not been fully implemented in Poland. Even though the majority of Poles have a positive attitude towards employing foreigners, stereotypes exist that cause discriminatory behaviour by employers, co-workers and officials. Legal regulations, long and complicated procedures for obtaining work permits, including for short periods, and the high cost of employing migrants are factors that may lead to discrimination in the labour market.

Refugee reception policy

The asylum procedure is managed by two administrative bodies, the Office for Foreigners and the Council for Refugees, and, according to regulations, should take no more than six months. However, in practice, it usually takes much longer: up to two years. Work is prohibited until refugee status or subsidiary protection is granted with only one exception: if the first instance body does not issue a decision within six months, the asylum seeker can apply for permission to work until the procedure has been completed.

During the asylum procedure, people are placed in centres for asylum seekers where they receive food, basic medical and psychological help, a clothing allowance and a monthly allowance of about 15

1 For more information see: Undocumented Migration In Poland, December 2008, <irregular-migration.hwwi.net/Poland.5800.0.html>.

2 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, Official Journal of the European Union L 348/98, 24.12.2008.

3 Information provided to Amnesty International by the Ministry of Interior and Administration.

Euros. Many centres are ill-equipped to accommodate large families with small children. Heating, hot water and food storage conditions cause constant problems. Social assistance is poor due to the small number of staff employed in detention centres and their lack of language and cultural training. There are no special procedures or protection for particularly vulnerable people. Although the meals are supposed to suit religious and cultural habits, only the eating habits of Muslims are respected. Specialised health care is provided in a few selected hospitals, which are often distant from the asylum centres, and no interpreters are provided by the state to accompany patients⁴. Conditions in centres are not conducive to long and intensive psychotherapy. Finally, most of the centres are located in remote areas, hampering the integration of asylum seekers

In theory, it is possible for asylum seekers to apply for a monetary equivalent allowing them to live outside the centre – a solution that would greatly enhance the integration process. However, in practice, there is no cheap housing provided by the state to match the amount of money received. Moreover, renting an apartment is very expensive and difficult for immigrants, who are not considered desirable tenants by private owners.

Asylum seekers can also be placed in detention centres. According to a report prepared by Caritas Poland, these centres are prison-like places, with little respect and understanding for people from different cultures (Caritas Polska, 2007). Sanitary facilities do not comply with hygiene norms, dormitories are small, shabby and dimly lit. The meal portions are not sufficient, which often leads to hunger strikes. Only the eating habits of Muslims are respected. Moreover, detainees have no access to legal information or to information about their rights in their mother tongue (Caritas Polska, 2007).

Migrants' social and economic rights

Migrants, other than refugees, have limited access to social rights depending on the legal basis of their residence permit, whereas persons granted refugee status or subsidiary protection obtain the same access to social provisions (such as education, health care, housing, unemployment benefits) as Polish citizens. They are also entitled to a 12-month individual integration programme after the completion of their asylum procedure. Unfortunately, in practice, the integration programmes are too short and seldom take into account the individual needs of the beneficiaries. Professional courses are scarce and efforts to integrate immigrants into the labour market ineffective.

Social housing is hardly accessible, even to Polish citizens, let alone migrants. Migrants' applications are often rejected by officials, who are either unaware of relevant regulations or deliberately

unhelpful. There is an urgent need to provide refugees with access to cheap housing. Without solving this problem, integration cannot be achieved.

On the positive side, everyone in Poland has the right to education, regardless of their citizenship or legal status, and education is compulsory for minors aged 6 to 18 years. All migrants have free access to education up to lower secondary school. Schools are responsible for organising additional Polish lessons for migrant children. However, no additional support (such as teacher assistants⁵ or the services of an integration facilitator) is provided and there are no educational/vocational programmes to bridge educational gaps for teenagers and young adults.

Migrant single parents (mainly women) are in an extremely difficult situation. Most of them cannot access single parent's benefits as they are unable to produce documents to prove their single status. It is very difficult for them to work, as public day care centres and kindergartens are hardly accessible, while private ones are very expensive. Another barrier is that many migrant women, especially women from a Muslim background, have no professional training or experience. Nevertheless, a considerable number of single mothers and other women are determined to work, perhaps more than any other social group. Unfortunately, no special social assistance or programmes are available to help migrant women to enter the labour market.

Racism and discrimination against migrants

Poland has no tradition of a multiracial society and, since World War II, has basically been a mono-national country. Hence, the increased number of migrants has raised the issue of the cultural gap and resulted in low tolerance for people with a different skin shade. Although the problem of open racism and discrimination against migrants is not alarming, foreigners in Poland face racist and discriminatory behaviour, such as racist jokes, xenophobic publications, offensive slogans, and oral insults, and sometimes even physical attacks. There have been cases of discriminatory practices, misinterpretation of legal regulations, and impolite and discriminatory treatment by public officials. There have also been cases where football players and doctors from Africa and Asia have been abused and attacked by xenophobic groups. However, there is insufficient data in this respect and it is very difficult to estimate the scale of the problem. This is partly due to the fact that migrants do not always report instances of racism or discrimination and not many complaints are brought before the courts. Discriminatory incidents are very often not acted on by the police and in many cases possible racist motives for crime are overlooked.

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Polish emigration: Hopes and challenges

For more than 200 years, Poland has been a region of emigration, for both political, especially during the 19th Century, the World War II and Communist era, and economic reasons. Post-war emigration from communist Poland was relatively low (Stola, 2001). The Stalinist period witnessed virtually no migration at all. After 1956, for a short period of time, there was an increase in emigration, which quickly declined with the death of the political thaw. From the 1970s until the early 1990s, emigration rose continuously. The political and economic transformations of the early 1990s – the fall of communism and the rise of the free market – resulted in a decrease in emigration from Poland, despite the grim economic situation (Kaczmarczyk, 2006). A new wave of emigration followed Poland's accession to the European Union in 2004, when the British and Irish labour market opened to Poles. The large-scale emigration of mainly young and often educated people has had many effects on Polish society and the economy.

The remittances sent by migrants to their families in Poland are an important part of the migration process. Remittances are not only sent to support spouses and children; where the whole family lives abroad, many migrants invest back home, mainly in real estate, as 'insurance for their future' or in preparation for their return. Remittances are especially important for local economies, and their impact is most visible in small municipalities.

Emigration also leads to brain and workforce drain in the Polish labour market, especially in construction (engineers, welders) and health (doctors, nurses and technical staff) sectors. Both local and national governments have undertaken numerous, but seldom effective, activities, to attract educated migrants back to Poland. The metropolitan municipalities of Wrocław and Gdansk have been especially active, organising meetings and promotion campaigns in the United Kingdom and Ireland. The programme 'Work in Poland' was designed to reinforce the skills and effectiveness of non-governmental organisations providing services to the labour market and to prevent emigration by supporting four components: know-how, skill, practice and information (FISE, 2008).

Emigration has also resulted in the depopulation of small villages and towns, especially of young people. This is often followed by the closure of infrastructure for youth, like clubs, schools and other facilities, which becomes another push factor. Large-scale emigration also has significant social impacts on Polish society. It can lead to changes in traditional family structures, with grandchildren and grandparents living together while their parent(s) work and live abroad. Some scholars argue that changes

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4 NGOs like the Association for Legal Intervention or 'Ocalenie' Foundation provide volunteer interpreters, but they cannot cover all the needs.

5 The latest amendment to the System of Education Act provides teacher assistants for migrant children from January 2010, but for no more than 12 months.

Migration: A Priority Issue in Serbia

Migration is an issue of great importance in Serbia. Recent armed conflict and the current economic insecurity have contributed to massive migration flows, both to and from Serbia. These flows mostly involve refugees, internally displaced persons, returnees and trafficked persons. The current economic turbulence fuelled by the global economic crisis may also spur a new wave of ‘brain drain’.

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Refugees, IDPs and returnees in Serbia

Refugees in Serbia include a large population of refugees from Bosnia and Herzegovina (BiH) and Croatia and internally displaced persons (IDPs) from Kosovo, as well as Serb nationals who fled the conflict in the 1990s, only to return to Serbia now on the expiry of ‘temporary protection’. The United Nations High Commission for Refugees (UNHCR) has included Serbia among the five countries in the world with a protracted refugee situation (UNHCR, 2008a).

Refugees from Croatia and Bosnia and Herzegovina

In 1996, the number of refugees from Croatia and BiH reached nearly half a million; this number has been steadily decreasing as many have returned to their countries of origin, have been naturalised in Serbia or have resettled in third countries. In June 2008, there were 97,354 refugees, 75 per cent of them from Croatia (Commissariat for Refugees of Serbia, 2008).

The return of refugees to their country of origin still remains a delicate issue and is proceeding slowly. Refugees from Croatia have difficulties in returning to their country because of unresolved tenancy rights, ‘convalidation’ of years of service, employment discrimination and citizenship status, among other things.

Regarding the integration of refugees into society, the Serbian Government has to make more of an effort to solve issues of unemployment, lack of housing, education and obstacles to obtaining Serbian citizenship. The unemployment rate among refugees is 30.6 per cent compared to 20.8 per cent in the overall population (Group 484, 2007). The main obstacle to solving the problem of refugees is the difficult and unstable economic and political situation, as well as the lack of a developed legal and institutional system.

IDPs from Kosovo

According to UNHCR data, 206,071 IDPs from Kosovo are residing in Serbia (2008b). Due to security reasons, unresolved property issues and the poor economic situation, the prospects of return for these IDPs remain bleak; in the 10 years since the end of the conflict in Kosovo, only 18,724 displaced persons have returned, of which 8,027 were Serbs.

Many IDPs are facing undue hardship and experiencing problems in exercising basic human rights. The poverty rate among IDPs (14.5%) is more than twice as high as among the overall population (6.8%) (Statistical Office of the Republic of Serbia, 2008). Roma IDPs are in the most difficult situation. Many of them do not have personal documents, which hinders their access to employment, health care and social welfare services (UNDP & UNHCR, 2008).

The Serbian Government insists that these IDPs be returned to Kosovo, so the activities of major international organisations and donors are limited to projects related to return. The situation did change slightly in 2009; IDPs are now eligible for accommodation projects as part of the integration process.

Readmission agreements for returnees

In the 1990s, during the armed conflict that followed the disintegration of former Yugoslavia, four million people left their homes. Several hundreds of thousands of them received temporary protection in the countries of Western Europe on the grounds of discrimination and war in their country of origin. After the democratic changes in October 2000, thousands of Serbian citizens sought asylum in Western Europe.

Since almost all of their applications for asylum have been rejected and temporary protection withdrawn, these people are now returning to Serbia on the basis of readmission agreements signed by the Government of Serbia. Apart from some modest attempts, there has been no systematic and organised approach to identify and record the problems of returnees, either in the former host countries or in Serbia.

Between 50,000 and 100,000 people have returned to Serbia from European Union countries, among which the majority are Roma people, mostly from Germany (50,000) (Council of Europe, 2003). Since 2003, the Ministry of Interior of Serbia has

received more than 27,000 requests from Western countries for the deportation of Serbian citizens. The requests, as well as the readmission agreements, primarily involve people who are forcefully deported, and usually do not encompass individuals who have returned ‘voluntarily’, i.e., those who have obeyed the decision of Western country authorities to leave the country. Some EU countries, through the International Organization for Migration (IOM), provide once-off assistance to returnees if they agree to return. Tickets and money (most often around 1,000 Euros per family) are given to returnees if they agree to return ‘voluntarily’. Since 2000, the IOM Office in Belgrade has registered 13,000 returnees who were beneficiaries of this assistance programme.

The readmission agreements obviously do not prevent Serbian citizens from seeking asylum in EU countries and other Western countries. By the number of filed asylum requests (6,200), Serbia was seventh in the world in the first half of 2008 (UNHCR, 2008c). In 2007, Serbia was fourth in the world with 15,400 asylum requests (UNHCR, 2008d)¹.

The overwhelming majority of Serbian people who apply for asylum are returned from Germany. In 2006, 3,282 citizens of Serbia applied for asylum in Germany. Most of them were Roma (43%), followed by Albanians (37%, mostly from Kosovo). Only 2.5 per cent were ethnic Serbs (Voice of America, 2007).

Assistance to returnees whose asylum claims have been rejected or whose temporary protection has been terminated is often provided on an individual basis, as it is not a part of an overall development process and cooperation between the host country and the country of origin. EU pre-accession funds do not encompass returnees. The lack of coordination and information exchange between Western countries and Serbia is a major obstacle to the provision of adequate assistance to returnees. Western countries do not always submit information about these persons to Serbian authorities (e.g., about their health situation and family status), which hampers adequate planning for their admission to Serbia.

Although a National Strategy for the Reintegration of Returnees has been adopted and the Inter-ministerial Council for Reintegration has been estab-

¹ Data for Serbia may include Montenegro in a few countries where no separate statistics are available for both countries.

lished, there are still questions regarding the allocation of the necessary resources for implementing a comprehensive reintegration policy.

Male victims of human trafficking

Economic hardship increases vulnerability to trafficking. Recent research² by the Victimology Society of Serbia has focused on male victims of trafficking. The survey of 407 male victims of human trafficking over the period 2003 to 2007 found that 342 (84%) were adults and 65 (16%) minors.

Foreign male victims primarily originated from China and Turkey, followed by Afghanistan, Albania, India, Kazakhstan, Pakistan, Moldova, Macedonia and Romania. The main way of recruiting adult men is by offering or promising a job. The main push factors are poverty and unemployment, as well as myths about the West, which attract those looking for better jobs, incomes and a better future. Labour exploitation is the most frequent form of trafficking of men: male victims are exposed to longer working hours and lower pay than promised, and, in some cases, are not paid at all.

As for male victims who are minors, the survey suggests an increase in the number of boys identified as victims of human trafficking, particularly those between 14 and 17. Some of these minors are from Albania, Turkey, Bulgaria and Georgia. Among Serbian child victims, Roma boys are more exposed to human trafficking. Internal trafficking is most prevalent; in terms of transnational trafficking, Serbia appears to be a country of origin and transit (but primarily to neighbouring countries such as Croatia, Montenegro and Macedonia). The main forms of exploitation of boys include begging, labour exploitation, pressure to commit crime and, to a lesser extent, sexual exploitation. Child victims, similarly to adults, are placed under the control of the trafficker through coercion and all forms of violence (physical, sexual and psychological). Survey results also suggest that particular risk groups are children from poor families, Roma children, deficient families, as well as abandoned children, i.e., street children and disabled children.

Trafficked victims are transported or transferred by different means (car, plain, train, boat), but also on foot (particularly in the case of illegal border crossings). In the case of transnational trafficking, victims are transported both legally and illegally – outside official border crossing points, or through official border crossing points, but either with forged

documents or hidden in cars, trains, buses or other means of transportation.

In relation to the trafficking of men, Serbia is primarily a country of transit, particularly for men coming from Albania, Turkey, the Far East and Middle East, primarily going to Italy, but also to Germany, France, Greece and Scandinavian countries, as well as other EU countries. Some of the destination countries for Serbian men are Russia, the United Arab Emirates, Saudi Arabia, Malta, Bosnia and Herzegovina (Republika Srpska) and Macedonia.

The main trafficking route in Serbia is from the South to the North or West, i.e., from Turkey, to Western Europe, passing through Kosovo, Central Serbia, Hungary or Croatia. This route is primarily used for trafficking and smuggling of people from Albania, Asia, and those coming from or via Turkey. It is also used for other forms of illegal trafficking, such as in narcotics, arms, cattle and so forth. This part of the Balkans and the South Eastern Europe (SEE) region will probably remain problematic, at least in the near future, due to the weakness of both the legal and political system in Kosovo, non-existence of a visa regime, provisions for free entry and stay in Kosovo territory, weak border controls and weak controls over migration flows in general, among other things.

The enlargement of the EU, and the entering of Romania and Bulgaria in particular, contributed to changes in trafficking routes crossing Serbia, especially in terms of entry points, which moved to the South, mainly to Kosovo. Moreover, police interventions that resulted in routes being cut off that previously went from or via Albania to Italy by sea also contributed to trafficking routes being changed. At the same time Serbia became more appealing for those transiting to Hungary, particularly after Hungary entered the EU, because if a person reaches Hungary, their way to other EU countries is much easier.

Brain drain

Armed conflict, hardship due to economic transition and decreased opportunities for employment contributed, not only to the mass exodus of people from their homes, but also to the brain drain, particularly of young and educated people. About 500,000 young people left Serbia between 1991 and 2001 in search of better livelihoods. A survey done in Serbia in 2007 found that 75 per cent of students want to live and work abroad, compared to 50 per cent in 2002 (Youth Coalition of Serbia, 2007, p.13).

IOM, UNDP, ILO, UNICEF and other partners of the Serbian Government have made an effort to improve access to decent work for young people through better policies and programmes addressing youth employment and migration. With USD 6.1 million from the Spanish Government's Millennium Development Goals Achievement Fund and USD 1.9 million from the Serbian Government, IOM is heading a programme over a two-and-a-half-year period targeting disadvantaged young men and women,

especially Roma, and those most at risk of social exclusion and prime candidates for emigration (IOM, 2009).

However, limited employment opportunities, a low level of investment, low wages and the current global economic crisis will not help to stem the emigration flow. ■

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2 This survey, conducted by the Victimology Society and financed by the US Department of State, constitutes a central part of the currently running research project on male victims of human trafficking in Serbia. The aim of the survey, conducted in 2008 and the beginning of 2009, was to gain knowledge about the scope, structure and characteristics of trafficking in human beings in Serbia, with particular emphasis on male trafficking, as well as about the response of state agencies and NGO sector to this phenomenon.

The Externalisation of Migration and Asylum Policies:

The Nouadhibou Detention Centre

The outsourcing of immigration and asylum policies by European countries, such as Spain in the case of the Nouadhibou centre in Mauritania, dangerously threatens migrants' basic human rights.

Spanish Commission for Refugee Aid (CEAR) as a member of 'Platform 2015 and More'

The European Union has been working towards a common policy regarding immigration and asylum; a process that has intensified over the last few years. In 2008, the EU approved two legal instruments (the Return Directive and the European Pact on Immigration and Asylum) with concerning implications for migrants: the criminalisation of irregular immigrants, the violation of migrants' rights, and the imposition of further obstacles for asylum-seekers and refugees. Moreover, various European countries have launched serious reforms in a similar direction through national legislation. Spain is currently in the process of enacting a new asylum law and preparing a restrictive reform of its immigration laws, at the request of the Spanish Government in both cases. In addition, significant efforts are being made to adopt policies that externalise migration control by making bordering countries east and south of the EU responsible for the containment of migrants trying to reach Europe.

In 2006, 31,678 migrants from Africa and Asia arrived in canoes on the shores of the Canary Islands, a phenomenon that triggered exaggerated media coverage and a disproportionate reaction by some political actors. Since then, the EU and the Spanish Government have intensified the presence of Frontex and signed repatriation agreements for migrants from some African countries (e.g., Senegal, Mauritania, among others). These agreements provide for joint patrols of the western African coastline by the police bodies of African countries and the Spanish Civil Guard (Spanish Gendarmerie). These measures have had an important impact: in 2008, only 9,181 individuals arrived at the Canary Islands, and between January and April of 2009, arrivals dropped by 50 per cent from the previous year, falling from 2,784 to 1,472, according to the Spanish Interior Ministry.

Mauritania: The case of Nouadhibou

However, externalisation policies, as successful as they may seem to some European governments determined to close international borders, violate the rights of refugees and migrants. As an example, we will look at the Nouadhibou detention centre

in Mauritania. The centre was built in March 2006 by members of the Spanish Army and funded by the Spanish Agency for International Development Cooperation (AECID). At the request of the Spanish Ministry of Foreign Affairs and Cooperation, the Spanish Commission for Refugee Aid (CEAR) carried out an evaluation of the site in October 2008.

Mauritania is not only one of the main transit countries for migrants on their way to Europe, but also a country of immigration and refuge, which is home to around 300,000 foreign workers, among whom between 10,000 and 40,000 live in the town of Nouadhibou. These foreign workers mainly occupy positions in the informal economy (local trade, agriculture, hospitality, construction, domestic work, and so forth). Although Mauritania has ratified numerous international human rights instruments of the UN, Organisation of African Union (OAU) and ILO, it does not have a normative framework for meeting the commitments made under these instruments. Attempts to migrate to a third country are not considered a criminal or administrative offence in Mauritania. There are no formal procedures or administrative regulations applying to detainees and no possibility for appeal before administrative or judicial authorities. Moreover, the right to legal aid and an interpreter is not upheld.

The Mauritanian authorities acknowledge the inadequacies of the laws and procedures governing migrants/asylum seekers, as pointed out by the CEAR delegation. They argue, however, that the situation will improve with the passing of the new regulatory migration law. However, instability resulting from the coup d'état of 6 August 2008 has delayed the implementation of these measures and the passing of the new law.

An old school becomes a jail

The CEAR delegation was able to confirm these inadequacies upon observing the Nouadhibou detention centre's facilities and interviewing government employees, migrants and social organisations. The centre is located near the heart of Nouadhibou, a city of around 120,000 inhabitants, in an old school in which the classrooms have been turned into cells. A quick look at the centre reveals deteriorating facilities due to lack of maintenance and, according to some of the individuals interviewed, theft of some of the equipment provided by the Spanish Army to renovate

the building. The Mauritanian officials in attendance displayed a striking lack of responsibility for the situation, although they admitted that the minimum requirements were not met and that it is necessary to move towards a more humanitarian approach to the treatment of migrants. They also pointed out clearly and emphatically that they perform their jobs at the express request of the Spanish Government. This situation leaves the Mauritanian officials at the mercy of the future decisions of the Spanish Government.

Due to the small and enclosed cells in the detention centre, the migrants lie in cots all day, enduring substandard and unhealthy conditions. The Mauritanian Red Crescent provides medical care. The centre has a small and very basic clinic for first aid, and, if a migrant needs to be hospitalised, the Red Crescent accompanies them and pays their expenses, as there is no provision for medical coverage in this country. The centre also provides a mobile phone to allow migrants to make at least one phone call to their families. None of the detainees interviewed had received legal assistance or the services of an interpreter during their detention. Some individuals complained about maltreatment at the Mauritanian police station.

Detainees do not perform any type of activity and are kept from walking or doing exercise in the courtyard; they are only allowed to walk the fifty or sixty metres to the latrine, with a police escort. This strict control is due to the fear that they might escape as a consequence of the poor conditions. Information received from various sources puts the average stay at between 3 to 15 days, except in extraordinary cases. The authorities point out that repatriation takes place as expeditiously as possible.

It is important to note that only five of the detainees interviewed acknowledged that they had been intercepted when attempting to cross into the Canary Islands. Eight others claimed they had been arrested in Nouadhibou while they were working, in most cases in the fishing industry, or while doing daily activities; they denied secretly seeking to immigrate to the Canary Islands.

According to the information collected, migrants are not informed of when, how or under what circumstances their transfer will take place. Many migrants interviewed expressed concern about how they would reach their place of origin after being left at the

border. Some stated that they might have to travel more than a thousand kilometres without resources (money, transport, food, drink). The general opinion among migrants, authorities and social organisations is that most of the migrants, once expelled, try to re-enter Mauritania.

International protection process paralysed

Mauritania has only had a formalised asylum procedure since 2005. The law stipulates that applications must be submitted to the Interior Ministry by the applicant himself or by the United Nations High Commission for Refugees (UNHCR). Applicants must be given a temporary residence permit, which can be renewed after three months; this status gives them the right to work and to use social services. Applications are reported to the National Advisory Commission on Refugees, which examines the cases and sends its opinion to the Interior Ministry for the final decision on recognition of the status of refugee.

An individual recognised as a refugee has the right to receive the same treatment as citizens in matters such as access to health services, employment, social security and education. If the request for asylum is rejected, there is no provision for appeal. However, these laws have not yet been put into practice and, given that the National Advisory Commission on Refugees still does not function with regularity, the task of reviewing applications for asylum devolves to the UNHCR. According to data from Amnesty International, there are currently 950 refugees in Mauritania under the protection of the High Commissioner. In March 2008, refugee status had only been confirmed in 38 out of 80 cases transferred from the UNHCR to the Interior Ministry. The institutional instability during 2008 paralysed the process.

In addition, there is neither a protocol nor an organised process for gaining access to detained migrants or to facilitate their access to information regarding the status of their application. This situation is in violation of the principle of devolution, which prevents the repatriation of migrants who are in danger of suffering reprisals in their state of origin. Organisations that defend refugees as well as the National Association for the Fight against Poverty (ALPD), one of UNHCR's local counterparts, should have special authorisation to enter detention centres to meet with migrants, detect asylum cases and offer assistance.

After analysing the situation of the detention centre, the inadequacy of its facilities, the conditions under which those who are subject to deportation to Senegal and Mali are kept, and the absence of a legal structure in Mauritania to monitor the centre's operation, CEAR's report called for the Mauritanian authorities to proceed with the immediate closure of the centre. Moreover, in accordance with this measure, both the Spanish Government and the EU, in conjunction with Frontex, should immediately suspend cooperation in migration matters that in any

way lead to the detention of immigrants under conditions such as described in Mauritania.

Conclusions

As reflected in CEAR's report, the current situation for migrants in Mauritania is very similar to the situation before the establishment of the centre in respect to the absence of basic rights and legal guarantees. There is great scope for improvement in the laws pertaining to migrants in Mauritania and their implementation, and in relation to the training of officials.

CEAR maintains a critical stance towards the outsourcing of immigration and asylum policies by the EU, and by Spain in particular, because it erodes basic rights and the rule of law and shifts the responsibility for migration control to third countries, most of which have not developed sufficient control mechanisms with respect to fundamental human rights in areas such as legal assistance, access to asylum procedures, the right to judicial review of administrative decisions or the period of detention.

Finally, there can be no long-term migration management without addressing the real causes of impoverishment and the absence of prospects of the affected populations; focusing the response to migration on border controls and containment diverts migration flows, strengthens the mafias that profit from migrants' suffering and generates resentment, which may have incalculable consequences. ■

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lawyers; and a lack of motivation and skill on the part of the lawyers appointed to defend detainees. These obstacles are magnified by the expeditious nature of procedures in detention centres: e.g., in detention centres an appeal regarding asylum must be lodged within 15 days, instead of the normal 30 days. These accelerated procedures make it more stressful for the lawyer and client, compounding other obstacles.

These and other findings were made public in November 2008 in a report by NGOs visiting detention centres (CIRE, 2008).

To challenge their detention, foreigners may appeal to the *Chambre du Conseil*, the tribunal responsible for deciding about remanding people in custody. However, this judicial review is not automatic, as in criminal affairs, and control by the tribunal is limited. The judge may only assess the lawfulness of the detention, not whether or not the detention is proportionate and adequate according to the specific circumstances of the case. These limitations explain why only a small proportion of detention orders, 16 per cent, are challenged. ■

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in family structure and the stresses imposed by living 'between' two countries and cultures can also lead to children experiencing learning difficulties in school, and, in some cases, drug and alcohol abuse (Brzuskiwicz, 2004), although other factors may also play a part.

BOX 9: Siemiatycze chain migration to Brussels

Since the late 1980s, the small town of Siemiatycze of 16,000 inhabitants, located 140 km north-east of Warsaw has had a particular economic, social and cultural relationship with Brussels. It is difficult to remember who initiated the chain migration, but the town mayor estimates that between 2,000 and 3,000 thousand people from the town are working in Brussels. Interestingly, the local newspaper publishes daily weather reports for Brussels. Until 1 May 2009 and the opening of the Belgian labour market to new EU members, the vast majority of migrants worked illegally in construction and housekeeping or as nannies. The majority of migrants have been investing money in Siemiatycze. The successful ones, locally called 'Brusselites', own expensive villas on the lake shore, wear fashionable hairdos and clothes, and go to trendy pubs and restaurants, atypical of other towns in the region. Since this migration flow began, the number of divorces in Siemiatycze has risen significantly, and there has been an increase in drug and alcohol abuse among youth from non-traditional family structures. Nevertheless, a vast majority of school students surveyed consider Brussels as an obvious, although often temporary, option for their future (Brzuskiwicz, 2004).

The decision to migrate is often based on accounts given by family or friends. These personal links create rather curious patterns, resulting in chain migrations, like between the small town of Gostynin and Antwerp, Skarysko Kamienna and Rome, Gorzów Wielkopolski and Alsace, and the small village of Stare Juchy and Iceland (Gazeta Wyborcza, 4 August 2004).

The global financial crisis has affected Polish migration. With unemployment rising in West European countries, East-West migration flows are shrinking. An ILO report (2009) indicates that, in the United Kingdom, the number of work applications from nationals of new EU member states, and particularly Poland, are shrinking. The number of applications decreased from 53,000 for a three-month period in 2007 to 29,000 for the same period in 2008.

Some Polish trade unions recently called for restrictions towards foreign workers from the Ukraine and Belarus to make room for potential Polish returnees from Western European countries.

However, a massive return of Polish migrants has not been registered (ILO, 2009). According to a report by the Migration Department of the Ministry of Labour and Social Policy (2009, p.63), there has been no massive return, perhaps because migrants are trying to make use of every option available to them in their country of residency, such as accepting lower pay, taking on jobs below their qualification level, and unemployment and family subsidies. An additional alternative is migration to a country where the effects of the crisis are less severe. ■

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