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The Legal Status of “Migrants” according to the European Union Legislation

Abstract: Given that “migration” is a global phenomenon, the international community as a whole had to provide it with a legal basis and to find global solutions, as proven à *l'évidence* by both the international and the European legislation and the “Global Compact for Migration” approved by the European Council.

As is well known, the European Union legislation consists of the texts of its official instruments, such as conventions, treaties, declarations, etc., in which we also find, in fact, the principles stated in the international instruments, which have, indeed, the force of *jus cogens* for all the states of the world, concerning the universal human rights, including, thus, the rights of the migrants. However, even in terms of their policy regarding migrants, the member states of the European Union have not only applied the principles stated in these international instruments, but they also have enacted a special legislation, and they have taken concrete measures for the implementation of its rules.

In the present article I offer the reader the possibility to become acquainted not only with the text of the legislation of the European Union regarding migrants, but also with the policy and the actions taken by the European states for the implementation of the international legislation, and of the European one regarding the social rights of the migrants as workers.

Keywords: the legal status of migrants, the social rights of migrants, international legislation, European legislation

Introduction

The “phenomenon of migration” or the “migration crisis” is a real problem for the entire mankind, including for the United Nations organisation (New York) and the member states of the European Union, which

requested from their main organisations, both international and of the European Union, to create a legal framework for migrants, as clearly proven by the texts of the main legal European instruments (conventions, treaties, declarations etc.), in which we find stated the principles also stipulated in the text of the main international legal instruments¹ — enacted by the United Nations General Assembly — which peremptorily has attested to the fact that the legislation of the European Union regarding migrants has reaffirmed all the international legal principles regarding the legal status of migrants.

In the texts of the main legal instruments of the European Union, we could also notice the fact that the problem of human rights,² including the rights of migrants, refugees, and stateless persons, has always been at the core of the European legislation.

Indeed, from the first legal instruments of the European Union, that is, from *The European Convention on Human Rights*³ (Rome, 1950), until the Decision of the European Council for a Regular Migration (21 March 2018),⁴ we could easily realise the fact that the key words of all these instruments are the fundamental rights and liberties⁵ of the man, also invoked specifically in the texts of all the international and European documents concerning the policy regarding migrants.

¹ N. V. DURĂ, C. MITITELU: “International Covenant on Economic, Social and Cultural Rights.” In: *8th Edition of International Conference the European Integration — Realities and Perspectives Proceedings*. Galați 2013, pp. 130—136; C. MITITELU: “The Children’s Rights. Regulations and Rules of International Law.” *Ecumeny and Law* 3 (2015), pp. 151—169.

² N. V. DURĂ: “The Fundamental Rights and Liberties of Man in the E.U. Law.” *Dionysiana* 1 (2010), pp. 431—464; C. MITITELU: “Provisions of Principle with European Constitutional Value on the Person’s Right to Freedom and Security.” *Journal of Danubius Studies and Research* 2 (2016), pp. 158—165.

³ C. MITITELU: “The European Convention on Human Rights.” In: *10th Edition of the International Conference The European Integration — Realities and Perspectives*. Galați 2015), pp. 243—252.

⁴ E. GUILD, K. WEATHERHEAD: “Tensions as the EU negotiates the Global Compact for Safe, Orderly and Regular Migration,” <https://eumigrationlawblog.eu/tensions-as-the-eu-negotiates-the-global-compact-for-safe-orderly-and-regular-migration/> (accessed 12.07.2020).

⁵ N. V. DURĂ, C. MITITELU: “The Treaty of Nice, European Union Charter of Fundamental Rights.” In: *8th Edition of International Conference The European Integration — Realities and Perspectives Proceedings*. Galați 2013, pp. 123—129; N. V. DURĂ, C. MITITELU: “The human fundamental rights and liberties in the Text of some Declarations of the Council of Europe.” In: *Exploration, Education and Progress in the Third Millennium*. București 2015, pp. 7—22.

The European Convention on Human Rights (Rome, 1950)

The member states of the Council of Europe ratified in Rome, on 4 November 1950, the first European legal instrument, that is, the *European Convention on Human Rights*, in which they stated their main purpose, namely to contribute to “the maintenance and further realization of Human Rights and Fundamental Freedoms,” and “to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration”⁶ (Preamble), that is, the *Universal Declaration of Human Rights*.⁷

As it is well known, in its articles, the *European Convention* also categorically prohibited any kind of slavery and forced labor.⁸ Indeed, according to the aforementioned Convention, “no one shall be held in slavery or servitude” (Art. 4 para. 1), and “no one shall be required to perform forced or compulsory labour” (Art. 4 para. 2).

The same Convention also prohibited “discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (Art. 14).

In Protocol No. 4 to the *Convention for the Protection of Human Rights and Fundamental Freedoms* — signed on 16 September 1963 — it was also stipulated that “everyone” has “the right to liberty of movement and freedom to choose his residence” (Art. 2 para. 1), and “everyone shall be free to leave any country, including his own” (Art. 2 para. 2). In other words, everyone is free to migrate and to choose his or her residence or their new country, including any migrant.

In “Protocol No. 12 to the *Convention for the Protection of Human Rights and Fundamental Freedoms*,” signed in Rome, on 4 November 2000, the “Member States” of the Council of Europe also reaffirmed “the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law” (Preamble).

⁶ *European Convention on Human Rights*, https://www.echr.coe.int/documents/convention_eng.pdf (accessed 10.10.2020).

⁷ N. V. DURĂ: “The Universal Declaration of Human Rights.” In: *10th Edition of the International Conference The European Integration — Realities and Perspectives*. Galați 2015, pp. 235—242.

⁸ N. V. DURĂ, C. MITITELU: “Human rights and their universality. From the rights of the ‘individual’ and of the ‘citizen’ to ‘human’ rights.” In: *Exploration, Education and Progress in the third Millennium*. Galați 2012, pp. 103—127; C. MITITELU: “The Human Rights and the Social Protection of Vulnerable Individuals.” *Journal of Danubius Studies and Research* 1 (2012), pp. 70—77.

This fundamental principle, which was indeed stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 6), remains in fact a basis principle for the legal system of the European Union's states.

The same member states who signed Protocol No. 12, in its first Article, reaffirmed the general principle concerning the prohibition of any kind of discrimination stipulated in Article 14 of the *European Convention on Human Rights*, and therefore “the enjoyment of any right set forth by law shall be secured without discrimination” (Art. 1 para. 1).

One should also consider the fact that the principles asserted by the first *European Convention on Human Rights* were constantly reiterated in all of the documents concerning the rights and liberties of man issued by the Council of Europe.⁹

The *European Social Charter* (Turin, 18 October 1961)

Among other things, the Council of Europe stated — in the Preamble of this Charter, published in Turin (Italy) on 18 October 1961 — that its “aim” was “the maintenance and further realization of human rights and fundamental freedoms,”¹⁰ which were, in fact, proclaimed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950.

In the same Preamble of the Charter, the Council of Europe considered that “the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin.”¹¹ And, among these “social rights,” according to the text of this Charter are “the right of migrant workers and their families to protection and assistance” (Art. 19).

Regarding “migrants,” the Council of Europe had, therefore, as a main source for the content of Article 19 of the *European Social Charter* — the text of the *European Convention on Human Rights* (Rome, 1950).

The *European Convention on the Legal Status of Migrant Workers* (24 November 1977).

On 24 November 1977, the member states of the Council of Europe — assembled in Strasbourg — signed the “European Convention on the

⁹ C. MITITELU: “Europe and the Constitutionalization Process of EU Member States.” *“Ovidius” University Annals, Economic Sciences Series 2* (2013), pp. 122—127.

¹⁰ *European Social Charter*. Turin, 18 October 1961, <https://rm.coe.int/168006b642> (accessed 18.10.1961).

¹¹ *Ibidem*.

Legal Status of Migrant Workers,” as they realised that “the legal status of migrant workers who are nationals of Council of Europe Member States should be regulated so as to ensure that as far as possible they are treated no less favorably than workers who are nationals of the receiving State in all aspects of living and working conditions” (Preamble).¹²

In terms of this Convention, a “migrant worker” is only “a national of a Contracting Party who has been authorized by another Contracting Party to reside in its territory in order to take up paid employment” (Art. 1). And, regarding the residence permit, the Convention stipulated that this one shall be issued “in accordance with the provisions of national legislation” (Art. 9, 2).

Among other rights stipulated in this Convention, migrant workers and members of their families have the right to “family reunion” (Art. 12), the right to have access “to housing and rents” (Art. 13), the right to be entitled “on the same basis and under the same conditions as national workers, to general education and vocation training and retraining” (Art. 14, 1), the right of the migrant worker’s children to be taught “the migrant worker’s mother tongue” (Art. 15), the right to transfer “all or such parts of the earnings and savings of migrant workers” (Art. 17, 1), the right to have “equality of treatment with its own nationals, in the matter of social security” (Art. 18, 1), to be provided with “social and medical assistance” (Art. 19), to receive the “full legal and judicial protection of their persons and property and of their rights and interests” (Art. 26, 1), etc.

Since 1980, for the citizens of European Union’s member states, the freedom of movement beyond national borders has been of “specific value and established in the Treaty of the European Union,”¹³ which changed, in fact, EU’s policy concerning migrants. However, according to a “European study,” the decisive factor which determined the European States to act together in order to implement such a policy in the field of migration, was in fact the “fears of migration.”¹⁴

In 1989, the European Union adopted the *Community Charter of the Fundamental Social Rights of Workers*,¹⁵ based on which

¹² *European Convention on the Legal Status of Migrant Workers*. Strasbourg [24.11.1977], <https://rm.coe.int/1680077323> (accessed 24.11.1977).

¹³ D. JACKSON, A. PASSARELLI: *Mapping Migration, Mapping Churches’ responses in Europe. Belonging, Community and Integration: the Witness and Service of Churches in Europe*, https://ccme.eu/wp-content/uploads/2018/12/2016-01-08-Mapping_Migration_2015_Online_lo-res_2_.pdf (accessed 15.11.2020).

¹⁴ *Ibidem*.

¹⁵ *Community Charter of the Fundamental Social Rights of Workers*, <https://www.eesc.europa.eu/resources/docs/community-charter-en.pdf> (accessed 22.10.2020).

President Delors (European Community) intended to build “a social Europe.”¹⁶

According to the decision taken by the Member States of the European Community of that time, by this “Community Charter,” “the implementation of these social rights [...] may take the form of laws” (Preamble),¹⁷ creating, in fact, a real European social law.

Since the said Charter has stipulated the fundamental social rights of the workers — among which we have to also include migrants workers — we have to underline the fact that, in conformity with its decisions, “every worker of the European Community shall have the right to freedom of movement throughout the territory of the Community” (Title I, Art. 1)¹⁸; every worker has to be engaged “in accordance with the principles of equal treatment as regards access to employment, working conditions and social protection in the host country” (Title I, Art. 2); and “all employment shall be fairly remunerated” (Title I, Art. 5) and “every worker of the European Community shall have a right to adequate social protection” (Title I, Art. 10).

As is well known, the European Union’s decisions regarding the migration and asylum policy, taken in 1999, in Tampere, Finland, are regarded “as a turning point towards a more realistic migration policy,”¹⁹ which was, however, in line with the 1951 Refugee Convention. Moreover, the decisions taken in Tampere prove *à l’évidence* the fact that, in time, there was an evident necessity for the European Union’s states to have “a more comprehensive approach towards migration.”²⁰

In December 2005, the Commission of the European Communities adopted a global approach to migration, and in December 2006, the European Council proposed to the EU’s member states to consider how the “legal migration opportunities can be incorporated into the Union’s external policies.”²¹

As such, by a “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee

¹⁶ See Declaration of President Delors on 8 December 1989 at the European Council of Strasbourg. In: *Community Charter of the Fundamental Social...*

¹⁷ *Community Charter of the Fundamental Social...*

¹⁸ *Ibidem.*

¹⁹ D. JACKSON, A. PASSARELLI: *Mapping Migration, Mapping Churches’ responses Europe study*, https://ccme.eu/wp-content/uploads/2018/12/2008-05-28_CCME_Publ_-_Mapping_migration_-_Mapping_Churches_responses.pdf (accessed 12.10.2020).

²⁰ *Ibidem.*

²¹ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, Brussels, 16.05.2007, COM(2007) 248 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0248:FIN:EN:PDF> (accessed 15.09.2020).

and the Committee of the Regions, on circular migration and mobility partnerships between the European Union and third countries,”²² — adopted on 16 May 2007 — the Commission identified “novel approaches to improve the management of legal movements of people between the EU and third countries ready to make significant efforts to fight illegal migration”²³ and to look “at ways to facilitate circular migration, [...]”²⁴

The Treaty on European Union

In 2012, the consolidated versions of the two treaties were published, that is, the Treaty on European Union and the Treaty on the Functioning of the European Union.²⁵

In the Preamble of the Consolidated version of the Treaty on European Union, the signatories declared expressly that they drew “inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.”²⁶

Therefore, the universal values of Europe, such as the inviolable and inalienable rights of the human person, freedom, democracy, equality, and the rule of law, drew their inspiration from the European cultural, religions and humanistic inheritance, to which the religions of the Jewish people and the Christians brought a substantial and peremptory contribution.

On the same occasion, the signatories of this Treaty expressed “their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,”²⁷ as well as “their attachment to fundamental social rights as defined in the European Social Charter [...] and in the 1989 Community Charter of the Fundamental Social Rights of Workers”²⁸ (Preamble).

²² Ibidem.

²³ Ibidem.

²⁴ Ibidem.

²⁵ Published in *Official Journal C 326*, 26/10/2012, pp. 0001—0390.

²⁶ *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN> (accessed 7.09.2020).

²⁷ Ibidem.

²⁸ Ibidem.

The Consolidated version of the Treaty on European Union

The Consolidated version of the Treaty on European Union stipulates that “[T]he Union shall define and [...] work for a high degree of cooperation in all fields of international relations”²⁹ (Art. 21, 2), in order to “consolidate and support democracy, the rule of law, human rights and the principles of international law”³⁰ (Art. 21, 2b).

Among other things, from the text of this Treaty we also have to remember the fact that the European Union reaffirmed the fundamental principles stated in the International Law in order to consolidate and support the legal protection of human rights, including, thus, the human rights of migrants, foreseen expressly in the text of the international instruments issued by the General Assembly of the United Nations.

The main policies and actions of the European Union, and, *ipso facto*, of “the Member States” are to “comply with the commitments and take account of the objectives they have approved in the context of the United Nations”³¹ (Art. 208, 2).

Under the auspices of the United Nations, different international instruments, such as pacts, conventions, declarations etc., which have the force of *jus cogens*³² for all the world’s states, have been adopted. And, among other things, in the text of these documents we also find a special reference to the problem of migration, and the texts issued from the offices of the European Parliament and European Council expressly reveal this reality.

One of this type of texts is the *Proposal for a Council Decision authorizing the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the area of immigration policy*,³³ which was adopted on 10–11 December 2018 at the Intergov-

²⁹ Ibidem.

³⁰ Ibidem.

³¹ Ibidem.

³² See N. V. DURĂ, C. MITITELU: *Principii și norme ale Dreptului Uniunii Europene privind drepturile omului și protecția lor juridică* [Principles and norms of the European Union Law concerning human rights and their judicial protection]. Constanța 2014), pp. 12–13; N. V. DURĂ: “The Right to Religion: Some Considerations on the Principal International and European Juridical Instruments.” In: *Religion and Equality. Law in conflict*. Eds. W. C. DURHAM JR., D. THAYER. UK: Routledge, 2016, pp. 15–24.

³³ *Proposal for a Council Decision authorizing the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the area of immigration policy*, Brussels [21.03.2018]. COM(2018) 168 final 2018/0078 (NLE), <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-168-F1-EN-MAIN-PART-1.PDF> (accessed 23.11.2020).

ernmental Conference held in Morocco under the auspices of the United Nations.

In the Agreements regarding the “Cooperation Agreement between the European Union and its Member States” and the other world states, we, indeed, find a reference point for the national strategies concerning migration. For example, from the text of one of these agreements, namely “Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part” (2017), we find out that The Parties reaffirmed “the importance of the joint management of migratory flows between their territories”³⁴ (Art. 16, 1), and that the Parties considered that “Migration concerns shall be included in the national strategies/national development framework for economic and social development of countries of origin, transit and destination of migrants” (Art. 26, 1).³⁵

This national strategy concerning “migration” indeed implies not only a national development framework for the economic and social development of the countries of origin, but also for the countries of transit and destination of migrants, hence the necessity to have both a common legal norm, and common actions of all the countries which are hosting migrants.

The *Joint Declarations* of 2017, the 2030 Agenda for Sustainable Development, and the New European Consensus on Development

In the *Joint Declarations*³⁶ signed on 30 June 2017 by *the representatives of the governments of the Member States and of the European Council, European Parliament and European Commission* — it was stated that

³⁴ *Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part*. Official Journal of the European Union L 343/3, [22.12.2017], [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A1222\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A1222(01)&from=EN) (accessed 15.11.2020).

³⁵ *Ibidem*.

³⁶ *Joint Declarations. European Parliament, Council, European Commission, Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission*. Official Journal of the European Union (2017/C 210/01) [30.06.2017], <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2017:210:FULL&from=EN> (accessed 23.10.2020).

“The 2030 Agenda for Sustainable Development (2030 Agenda), adopted by the United Nations in September 2015, is the international community’s response to global challenges and trends in relation to sustainable development”³⁷ (no. 1).

In the text of *Joint Declarations* it is also mentioned that migration is “a complex global, long-lasting phenomenon” (Art. 39) requiring, “[a]ddressing migration cuts across many policy areas, including development, good governance, security, human rights, employment, health, education, agriculture, food security, social protection and environment, including climate change”³⁸ (no. 40).

Therein it was emphasised that “through development policy, the EU and its member states will address the root causes of irregular migration and will, inter alia, contribute to the sustainable integration of migrants in host countries and host communities and help ensure the successful socioeconomic integration of returning migrants in their countries of origin or transit”³⁹ (no. 41).

Formally, under the auspices of the new European “Consensus on Development,” the EU and its members states decided to engage, since development “education and awareness raising can play an important part in raising levels of engagement among the public and in addressing the SDGs at national and global level, thus contributing to global citizenship”⁴⁰ (no. 122).

In other words, in the processes of education of every country of the European Union, the migrant people (children or adults) should not be neglected.

The Global Compact for Migration

In the text of the above-mentioned *Proposal for a Council Decision*,⁴¹ adopted during the Intergovernmental Conference held on 10—11 December 2018 in Morocco, the Council of the European Union mentioned that “since 2016, the European Union has been strongly and continuously engaged in the process of elaboration of the Global Compact for Migration”⁴² (no. 8), and that even “over the past years, the European

³⁷ Ibidem.

³⁸ Ibidem.

³⁹ Ibidem.

⁴⁰ Ibidem.

⁴¹ *Proposal for a Council Decision authorizing...*

⁴² Ibidem.

Union has built a comprehensive long-term strategy on migration covering all aspects of this phenomenon, from saving lives, offering protection to those in need, addressing the root causes of irregular migration and forced displacement as well as providing support to forcibly displaced populations around the world”⁴³ (no. 9).

Among other things, the *Proposal for a Council Decision* underlined the fact that “migration can only be addressed effectively by the international community as a whole” (no. 4), since “[m]igration is a global phenomenon that requires global solutions based on the principles of solidarity and shared responsibility”⁴⁴ (no. 4).

In the same *Proposal for a Council Decision...*, which was adopted in December 2018, the European Council insisted that “the final text of Global Compact on Migration” will be fully “consistent with the E.U. *acquis* and policy”⁴⁵ (no. 12).

The final text of this “Global Compact on Migration” is, indeed, fully consistent with the *acquis* and policy of the European Union regarding migrants.

In the “Attachment” to *Proposal for a Council Decision...*, it was also underlined that “this Global Compact rests on the principles espoused in the Charter of the United Nations”⁴⁶ (Preamble, no. 1), “on the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the other core international human rights treaties; the United Nations Convention against Transnational Organized Crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,” etc. (Preamble, no. 2), and that “this Global Compact expresses our collective commitment to improving cooperation on international migration” (Our vision and guiding principles, no. 8).⁴⁷

For the European Council, this Global Compact on Migration “is based on a set of cross-cutting and interdependent guiding principles” (no. 15). The main principle “is based on international human rights law”

⁴³ Ibidem.

⁴⁴ Ibidem.

⁴⁵ Ibidem.

⁴⁶ *Resolution adopted by the General Assembly on 19 December 2018, Global Compact for Safe, Orderly and Regular Migration*, United Nations A/RES/73/195, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195 (accessed 4.12.2020).

⁴⁷ Ibidem.

(no. 15, f), hence it has “a strong human dimension”⁴⁸ (no. 15, a). The second principle rests on the “International cooperation,” and the third principle rests on the “National sovereignty,” since “the Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law”⁴⁹ (no. 14, c).

The objectives and implementation of the policy of the European Union asserted by the Global Compact for Migration

Among the main Objectives of the policy of European Union, regarding “migration,” we find mentioned the commitment of the European Council “to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration”⁵⁰ (Objective 4, 20).

Another objective of the European Council was to provide specialised protection and assistance “with necessary support at all stages of migration, through identification and assistance, as well as protection of their human rights, in particular in cases related to women at risk, children, especially those unaccompanied or separated from their families”⁵¹ (Objective 7, 23, b).

At the same time, the European Union committed itself “to take legislative or other measures to prevent, combat and eradicate trafficking in persons in the context of international migration by strengthening capacities and international cooperation to investigate, prosecute and penalize trafficking in persons, discouraging demand that fosters exploitation leading to trafficking, and ending impunity of trafficking networks”⁵² (Objective 10, 26).

EU also committed itself to the objective of “developing and strengthening effective and human rights-based mechanisms for the adequate and timely screening and individual assessment of all migrants”⁵³ (Objective 12, 28).

⁴⁸ Ibidem.

⁴⁹ Ibidem.

⁵⁰ Ibidem.

⁵¹ Ibidem.

⁵² Ibidem.

⁵³ Ibidem.

In the policy of the European Union concerning migrants, human rights were also correlated with the identification and status determination of all migrants, and, for this reason, the EU member states are fully committed to “condemn and counter expressions, acts and manifestations of racism, racial discrimination, violence, xenophobia and related intolerance against all migrants in conformity with international human rights law”⁵⁴ (Objective 17, 33).

Therefore, the European Union member states have to be fully committed to condemn any kind of racial discrimination, xenophobia and intolerance, including those based on race, religion or belief,⁵⁵ against all migrants, in conformity with international human rights law.⁵⁶

In the “Attachment” to the *Proposal for a Council Decision...* — published in Brussels, by the European Commission — the European commentators of this document also noticed other EU objectives, namely “to adapt options and pathways for regular migration in a manner that reflects demographic and global labour market realities, optimizes education opportunities, reunites families, and facilitates access to protection in emergency situations” (Objective 5, 20).⁵⁷

Another objective of the European Union — noticed by European commentators — is that “to protect all migrant workers against all forms of exploitation,” and to “prohibit, through national legislation, non-State entities from confiscating or retaining travel or identity documents, as well as work contracts from a migrant in order to prevent abuse and exploitation, and allow migrants to fully exercise their human rights” (Objective 6, 21).⁵⁸

⁵⁴ Ibidem.

⁵⁵ N. V. DURĂ: “About the Freedom of Religion and the Laicity. Some Considerations on the Juridical and Philosophical Doctrine.” *Bulletin of the Georgian National Academy of Sciences* 4 (2019), pp. 156—164; C. MITITELU: “About the Right to the Freedom of Religion.” In: *Rethinking Social Action. Core Values*. Ed. A. SANDU et al. Bologna 2015), pp. 833—838.

⁵⁶ See N. V. DURĂ: “The Right to the ‘Freedom of Conscience’. Legal Basis for the Educational and Missionary Activity of Religious Denominations.” *Ecumeny and Law* 5 (2017), pp. 147—170; C. MITITELU: “The Right to Life. From the Prevention of Torture and Inhuman Punishment to the Abolition of the Death Penalty.” *“Ovidius” University Annals, Economic Sciences Series 2* (2013), pp. 128—133; N. V. DURĂ, C. MITITELU: “The Freedom of Religion and the Right to Religious Freedom.” In: *Conference on Political Sciences, Law, Finance, Economics & Tourism I*. Sofia 2014, pp. 831—838.

⁵⁷ *Attachment to the Proposal for a Council Decision Proposal for a Council decision authorizing the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration, in the area of immigration policy*. Brussels [21.03.2018] (OR. en), 7391/18 ADD 1, <https://data.consilium.europa.eu/doc/document/ST-7391-2018-ADD-1/en/pdf> (accessed 17.09.2020).

⁵⁸ Ibidem.

Certainly, for the implementation of all these objectives, “concerted efforts at global, regional, national and subnational levels, including a coherent United Nations system” (Implementation, no. 38)⁵⁹ is, indeed, required.

In the said document’s Conclusions, the European Council proposed that “the High-level Dialogue on International Migration and Development, currently scheduled to take place every fourth session of the General Assembly, shall be repurposed and renamed ‘International Migration Review Forum’ (Implementation, 45 a), and that the International Migration Review Forum shall take place in 2022, 2026 and 2030”⁶⁰ (Implementation, no. 45 c).

Therefore, we could say that the text of the Global Compact for Migration — proposed by the European Council on 21 March 2018, and adopted in Marrakesh, Morocco, on 10—11 December 2018 under the auspices of the UN General Assembly — also reveals a real and meritorious contribution of the representative organisations of the European Union to the genesis of an “unprecedented” event,⁶¹ and, *ipso facto*, to a new concrete policy regarding the legal status of migrants.

Indeed, above all, from the text adopted by the Heads of State and Government and High Representatives of the United Nations, in December 2018, we could also remember the fact that “the Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law”⁶² (Preamble, 14, c). And, by such statements, the UN undoubtedly reaffirmed the national sovereignty of the states even in their national policy regarding migration and migrants.

In the same final text, adopted in Morocco on 10—11 December 2018, the UN States committed themselves “to strengthen consular protection of and assistance to our nationals abroad, as well as consular cooperation between States, in order to better safeguard the rights and interests of all migrants at all times”⁶³ (Objective 14). In other words, all the states of the European Union are committed to take concrete measures to safeguard the rights and interests of all migrants in conformity with the international law.

⁵⁹ Ibidem.

⁶⁰ Ibidem.

⁶¹ *Intergovernmental Conference on the Global Compact for Migration, 5th—8th Plenary Meetings*, <https://reliefweb.int/report/world/speakers-call-robust-implementation-landmark-global-compact-protect-migrants-worldwide> (accessed 19.10.2020).

⁶² *Resolution adopted by the General Assembly on 19 December 2018...*

⁶³ Ibidem.

In lieu of conclusion

Addressing the issue of migration — one of today’s international phenomena — has given us the opportunity to notice the fact that the “migration crisis” is, indeed, a problem for the entire mankind, hence the responsibility belonging to all the authorities, both at international, and at local level.

From the analysis of the texts of the different documents, the reader was able, in fact, to understand that the problem of migration determined the General Assembly of the United Nations, and also the Parliament and the Council of the European Union to stipulate not only a clear common policy, but also to create a legal status of the migrants, which compels both the states of the world, and their citizens, to know and to protect their fundamentals rights.

Therefore, for the accomplishment of this *pium desiderium*, we not only have to know the international legal status of the “migrants,” but also to support the multilateral efforts to better manage migrant flows based on the respect for human rights according to the European legislation

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NICOLAE V. DURĂ

Statut juridique des « migrants » selon la législation de l'Union européenne

Résumé

Considérant le fait que la « migration » est un phénomène mondial, la communauté internationale dans son ensemble a dû intégrer ce phénomène dans le système juridique et trouver des solutions globales, comme en témoignent à l'évidence le droit international et européen, entre autres *Global Compact for Migration* approuvé par le Conseil européen. Comme on le sait, dans la législation de l'Union européenne, c'est-à-dire dans ses instruments juridiques officiels, tels que conventions, traités, déclarations, etc., on retrouve les mêmes principes que dans les instruments internationaux. Ils ont donc le pouvoir de *jus cogens* pour tous les pays du monde en termes de droits humains universels, y compris les droits des migrants. Par conséquent, c'est précisément en matière de la politique à l'égard des migrants que les États membres de l'Union européenne ont non seulement appliqué les principes énoncés dans les instruments internationaux susmentionnés, mais ont également adopté une législation spéciale et ont pris des mesures spécifiques pour mettre en œuvre ses dispositions. L'intention de l'auteur de cet article est d'offrir au lecteur l'occasion de se familiariser non seulement avec la législation de l'Union européenne sur les migrants, mais aussi avec la politique et les actions menées par les pays européens. En particulier, il s'agit de la mise en œuvre du droit international et européen sur les droits sociaux des migrants en tant que travailleurs.

Mots clés : statut juridique des migrants, droits sociaux des migrants, législation internationale, législation européenne

NICOLAE V. DURĂ

Status giuridico dei “migranti” secondo la legislazione dell’Unione Europea

Abstract

Considerando che la “migrazione” è un fenomeno globale, la comunità internazionale nel suo insieme ha dovuto integrare questo fenomeno nell’ordinamento giuridico e trovare soluzioni globali, come lo testimoniano à *l’évidence* il diritto internazionale ed il diritto europeo, tra l’altro *Global Compact for Migration* approvato dal Consiglio europeo. Come si sa, nella legislazione dell’Unione Europea, cioè nei suoi strumenti giuridici ufficiali quali convenzioni, trattati, dichiarazioni, ecc. troviamo gli stessi principi che negli strumenti internazionali. Hanno quindi il potere di *jus cogens* per tutti i paesi del mondo in termini di diritti umani universali, compresi i diritti dei migranti. Pertanto, è proprio nel campo della politica nei confronti dei migranti che gli Stati membri dell’Unione Europea non solo hanno applicato i principi enunciati nei summenzionati strumenti internazionali, ma hanno anche adottato una legislazione speciale e adottato misure specifiche per attuare le sue disposizioni. L’intenzione dell’autore di questo articolo è quella di offrire al lettore l’opportunità di familiarizzarsi non solo con la legislazione dell’Unione Europea sui migranti, ma anche con la politica e le azioni svolte dai paesi europei. In particolare, si tratta dell’attuazione del diritto internazionale ed europeo sui diritti sociali dei migranti in quanto lavoratori.

Parole chiave: status giuridico dei migranti, diritti sociali dei migranti, legislazione internazionale, legislazione europea