

GMG Practitioners Symposium - Working group A

Rooting migration policies in human rights

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The relevance of migration to the European Union

Nearly half of the top ten countries receiving the largest number of international migrants are Member States of the European Union, namely Germany (after the US and Russia), France, the United Kingdom and Spain.¹ According to the Treaty on the Functioning of the European Union, the Union shall "develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings".²

The focus on integration and the requirement for solid entrenchment in a fundamental rights culture

The FRA's European Union Minorities and Discrimination Survey conducted in 2008 shows that experience of discrimination is unexpectedly high amongst immigrant and ethnic minority people.³ Rights awareness amongst these groups comes close to be absent. These facts can be seen as indicating very low levels of integration. The Treaty of Lisbon provides, for the first time, an explicit legal basis to pro-actively develop European cooperation in the field of integration of legally staying third-country nationals.⁴ Many initiatives have already been taken at EU level. In 2009 the European Integration Forum and the European Web Site on Integration were launched and provide civil society and other actors for instances with a plethora of best practices in the area of integration.⁵ The European Fund for the Integration of third country nationals (EIF) provides 825 Mio EUR for the period 2007-2013. In April 2010 the EU Commission published the third edition of the 'Handbook on Integration for policy-makers and practitioners'.⁶ Initiatives like these are part of the agreed aim of the EU Member States to increase discussion on integration with a view to learning from one another so that the "Common Principles of Integration"⁷ are increasingly implemented on the ground. At the same time it is clear that all EU and Member State intervention in areas falling within the scope of the EU Treaties have to conform to fundamental rights.⁸ The horizontal obligation of the European Union

¹ See <http://esa.un.org/migration/index.asp?panel=1>.

² See Art. 79 TFEU.

³ 23.500 persons were surveyed in face-to-face interviews in all 27 EU MS, see http://fra.europa.eu/fraWebsite/eu-midis/index_en.htm

⁴ See Art. 79 Para. 4 TFEU.

⁵ See <http://ec.europa.eu/ewsi/en/index.cfm>. See best practices under <http://ec.europa.eu/ewsi/en/practice/index.cfm>

⁶ See at http://ec.europa.eu/ewsi/en/resources/detail.cfm?ID_ITEMS=12892

⁷ As agreed upon by the Council of the Union in 2004, see

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf

⁸ See Art. 6 TEU.

to actively fight against discrimination in all policy contexts has been further strengthened.⁹ Moreover the Commission announced a “zero-tolerance-policy” when it comes to violations of the Charter of Fundamental rights. Issues of immigration and integration have therefore to be solidly rooted in European fundamental rights standards.

The need for comparable data and reliable evaluation of integration policies

The Commission recently stressed that cooperation and transnational cooperation as outlined above are in need for “better harmonised statistics, more reliable cross-national surveys and reviews that take greater account of immigrants perceptions”.¹⁰ Moreover there is increasing recognition of the need to develop indicators allowing for a reliable evaluation of integration policies – a fact that was recently confirmed by the European ministerial conference on integration in Zaragoza mid April 2010.¹¹ The FRA provided in 2009 indicators in the area of children rights.¹² In 2010 it published a report dealing amongst others with the living conditions of unaccompanied asylum seeking minors and the respective legal procedures at national level.¹³ Other data dealing with the situation of migrants will follow, including data focusing on irregular migrants.

The need not to forget about the situation of irregular migrants

Only 10-15 % of the overall number of international migrants are estimated to be in an irregular situation.¹⁴ In Europe, research undertaken by the Clandestino project indicates that between 1.9 - 3.8 million third-country nationals reside in the European Union in an irregular manner.¹⁵ Many of the rights enshrined in international human rights law are applicable to everybody, regardless of nationality or legal status. The European Commission defined humane and dignified treatment of irregular immigrants and compliance with fundamental rights as one of the elements of the EU approach in the fight against irregular immigration of third country nationals.¹⁶ In 2008, it also stressed that measures to fight irregular immigration “shall fully respect the dignity, fundamental rights and freedoms of the persons concerned” and highlighted the need for “illegally residing third-country nationals [to] have access to services that are essential to guarantee fundamental human rights (e.g. education of children, basic health care)”¹⁷. At this background criminalization of support activities, inappropriate detection practices and the general ‘limbo situation’ of irregular migrants should not be ignored. The FRA is currently undertaking research in these areas.

⁹ See Art. 19 TFEU.

¹⁰ The consolidation of the EU framework on integration (report to the 2010 Ministerial Conference on Integration), Commission staff working paper SEC(2010) 357 final as of 19.3.2010, at p. 7.

¹¹ See http://ec.europa.eu/ewsi/UDRW/images/items/doc/13055_519941744.pdf.

¹² See the report ‘Developing indicators for the protection, respect and promotion of the rights of the child in the European Union’, online at http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2009/2009_en.htm.

¹³ See ‘Separated, asylum-seeking children in European Union Member States - Summary Report’, April 2010, online at http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm. The report summarises the findings of face-to-face interviews with 336 separated, asylum-seeking children and 302 adults responsible for their care in 12 EU Member States.

¹⁴ Towards a Fair Deal for Migrant Workers in the Global Economy, Report VI, International Labour Conference, 92nd Session, ILO, Geneva, 2004, p. 11, para. 37.

¹⁵ See Clandestino, Undocumented Migration: Counting the Uncountable, Data and Trends Across Europe, <http://clandestino.eliamep.gr>.

¹⁶ Communication on policy priorities in the fight against illegal immigration of third-country nationals COM(2006) 402 final at 2.8.

¹⁷ A Common Immigration Policy for Europe: Principles, actions and tools, COM(2008)0359, 17.06. 2008, at pp 11 and 13.