


The Paradigms of EU New Pact on Migration and Asylum

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Abstract

Due to world crises and economic difficulties, several migratory waves have occurred in recent years. One of the main destinations for migrants was Europe. Burden of responsibility, lack of resources on the part of the Member States that received these immigrants and refugees were some of the consequences that mass immigration caused. In this way, to migrate these problems, the European Union decided to establish a New Pact for Migration and Asylum, where it divided the responsibility among all Member States, seeking a better redistribution of obligations. None of the States of the European Union are obliged to be adherents of this new pact, as they all have their sovereignty, however, if they refuse, they will be financially penalized by the European bloc. The present work intends to approach the aspects that were established by this new pact and also to talk about the benefits and harms of the migratory waves. The research aims to describe the positive and negative aspects brought by the new law in order to understand if it is in accordance with the General Theory of Human Rights, as well as the challenges faced by the European Union regarding migration and asylum issues. As it is a recent law, the methodology of the work is exploratory, meaning there will not be an exact final conclusion on the subject, but rather the beginning of related research in the field.

Keywords: Immigration; Migratory Waves; Refugees; Asylum; Europe Union

1. Introduction

The topic of migration is very important and complex in the European Union, especially when implies issues as security and the neighborhood policy of the European bloc. The European Union has been receiving a large migratory flow in recent decades, which has caused worries about national system of asylum, integration and return after the large movement of immigrants. In this way, a new approach to migration and asylum processes has been proposed for the European Union, with more effective procedures and a balance between responsibility and solidarity.

The methodology of this articule is qualified as qualitative and exploratory research. The issue is recent and still underdeveloped since the new pact was only applied in

2020. In this manner, the reader will not be able to reach a concrete conclusion on the subject but start a comprehension on this new standard. The methodology will be based on a review of the literature and characterized as descriptive, so the researcher is more interested in the process than in the result.

The main starting question is: what are the objectives of the European Union's New Pact on Migration and Asylum? In addition to elucidating this issue, the research aims to contribute to the understanding of this new legislation, including its advantages and disadvantages. The article will explore: a) the concepts of migration and asylum; b) the reason behind the migratory waves; b) the Europe's difficulties in dealing with the migratory waves; c) the analysis of the New Pact for Migration and Asylum.

The research will take into consideration the General Theory of Human Rights. This theory protects the dignity of every individual and is one of the most important theories for safeguarding the rights of immigrants and asylum seekers. The researcher will analyze the New Pact on Migration and Asylum to verify if certain aspects of the law comply with Human Rights.

Additionally, the Institutional Neoliberal Theory, which promotes cooperation between states to achieve a specific common goal, will also be utilized. This theory is applied when the member states of the European Union must show solidarity with each other in receiving refugees and asylum seekers. This theory is crucial in this scenario to prevent countries that receive the majority of migrants from becoming overwhelmed.

For the preparation of this research, information and data were taken from the official website of the European Parliament and the European Commission to better ascertain the new standards established by the new pact. The articles by Mendes (2019), Oliveira, Peixoto e Góis (2017) and Porto (2020) were also analyzed, which helped to elucidate the issues of the research. Additionally, more recent information provided by Amnesty International and Human Rights Watch will be analyzed and discussed for a better understanding of the new pact and the situation regarding Human Rights.

2. Migration and asylum

The European Commission categorizes legal migration as the movement of a population across geographical space, which can be temporary or permanent. Migrants have economic, cultural, political, or natural reasons for that. However, asylum is granted to a person suffering political persecution. This persecution can be caused by their political views, racial, sexual orientation and/or religious situations. Political asylum differs from refugee. Asylum is about individual cases, such as the famous Snowden case, while the refugee situation is about massive flows of a population moving to another country.

Since ten years ago, due to various recurring conflicts in the world and globalization, migratory waves have been increasingly from economically unstable countries and armed conflicts zones, internal or external, to peaceful countries and with stable economic in search of survival. According to the European Union Agency for Asylum's 2023 Asylum Report, some of the best-known conflicts that have triggered large waves of migration are in Syria and recently in Afghanistan. Many Syrian and Afghan

citizens have fled to European soil seeking to escape the conflicts in their countries (European Union Agency for Asylum 2023).

Several factors can trigger migratory waves, such as weakened economy, environmental disasters, wars, political, ethnic, or cultural persecution and the search for better living conditions. According to data from the European Parliament, on “January 1st, 2019, the number of people residing in an EU country with the nationality of a third country was 21,8 million, which represents 4,9 % of the EU population of 27 countries. At the same date, 13.3 million people in one of the twenty-seven EU countries were citizens of another EU country” (European Parliament 2020c). In order to better understand the reasons that lead people to immigrate, we can use the repulsion-attraction model. That model explains that at the center of the migration process is the rational agent or the migrant, who observes the characteristics of the country where he or she wants to migrate until decides to advance his migration process, believing that the new country will correspond to his or her expectations. Thus, we can ensure that migrants “reflect on the costs and benefits of mobility, and only migrate when the costs of movement (in the short term) are lower than the expected benefits (in the medium term)” (Oliveira, Peixoto e Góis 2017) .

There are three main factors of repulsion and attraction: I) sociopolitical factors: “ethnic, religious, racial, political or cultural persecution can lead people to leave their countries”. A very important fact is the war or coercion due to political factors by the government. This population usually becomes refugees in other countries that host them; II) demographic and economic factors: this form is related to unemployment and the economy of a country. People leave their poor countries in search of a better life with the incentive of good wages, better employment opportunities, a high standard of living and opportunities in the area of Education; III) environmental factors: people tend to move from natural disasters. This reason for migration is growing due to climate change (European Parliament 2020b).

3. Europe’s struggle to articulate the waves of migration

Europe has been the main target continent for Syrian and Afghan refugees, because it is very close to the Middle East, it is peaceful, and it has a strong economy. The proximity of Greece and Italy to these countries has greatly facilitated the entry of refugees, who after being on European soil, move to other member states such as France and Germany. The European Union could not withstand the large wave of immigrants and consequently many of them began to live on the streets and became vulnerable to health problems and human trafficking. The European Parliament expressed that “in recent years, Europe has had to respond to the most serious migration challenge since the end of the Second World War” (European Parliament 2020b). Consequently, measures have been taken to regulate these migratory waves to prevent that all Member States feel burdened.

Furthermore, many other immigrants from poor countries migrate to Europe in search of better living conditions, even from peaceful countries. Or people from within Europe move to other European countries in search of a job with a higher salary, such is the case of migrations from Portugal to Switzerland. About the migratory waves that occur from countries outside the Europe, the European bloc registered

1,25 million asylum applicants in 2015, and one million of this number arrived in Europe by sea. In 2019, the number decreased to 612.700 applicants and 120.000 of this people landed in Europe by sea ([European Parliament 2020a](#)). Although migration flows have slowed, the crisis has exposed the problems of the European asylum system. Moreover, a recent political crisis in Afghanistan affected the immigration numbers in Europe and made the current situation even more difficult.

The European Parliament has proposed a New Pact on Migration and Asylum to solve these problems. They suggest the reform of the Dublin Regulation, which indicated the Member State of the European Union responsible for processing applications for international protection. According to the European Parliament, “the flow of migrants and asylum applicants to Europe in recent years has demonstrated the need for a fairer and more effective European asylum policy” ([European Parliament 2019](#)).

4. Analysis of the new pact for Migration and Asylum of the European Union

Due to the large waves of migration to Europe and the problems triggered by them, a New Pact on Migration and Asylum was proposed by the European Union on 23 September 2020, to improve and streamline migration and asylum processes. This new pact reviewed the Dublin Regulation, a document that determines which state is responsible for processing each asylum application. The new standard also “establishes faster procedures across the EU’s migration asylum system and provides member states with new options on how they can express their solidarity”([European Parliament 2020b](#)).

In this way, there is a strengthening of trust caused by better and more effective procedures between Member States. The advantages are: a) legal certainty and protection of migrants and refugees; b) effective functioning of the system; c) credible application of the rules. Another important measure is the unified management of the Schengen Area between the interior and border policies ministries for a concrete cooperation until the end of 2020. In addition, a support and cooperation program with the purpose to assist and regulate internal border controls was also discussed. The proposals intended to reform the Schengen borders and to better analyze this area ([European Commission 2020](#)).

In order to have an agile and modern management at the external borders, a permanent European and Coast Guard Corps was created with the first shift in January of 2021. The deadline to integrate information systems for border and migration management will be in 2023. This project aims to transmit information about migrants that are passing through the borders of the European Union to the Guards ([European Commission 2020](#)). A strategy for search and rescue at sea has been also developed in Europe after many tragedies with migrants. This is not a law, but a moral duty. In 2015, 600,000 people were rescued at sea thanks to the European Union and Frontex. The coastal member states have responsibility for search and rescue operations; however, the responsibility for managing migration in Europe lies with the European Union ([European Commission 2020](#)).

However, some international organizations have raised concerns about violations of the human rights of refugees under the new law. The Amnesty International declared that the Migration and Asylum Pact reform will increase the suffering of

refugees and asylum seekers, highlighting that “the Pact will do nothing to improve Europe’s response to people in need of protection” (Amnesty International 2024). The organization reported the possibilities under the new law of arbitrary detentions, especially of families with children at EU borders, pushbacks, and destitution at European borders (Amnesty International 2024).

The Human Rights Watch has strongly expressed concerns about the negative impact of the new migration and asylum law on the rights of refugees. They stated that it is a disaster for migrants and asylum seekers, and that the system will severely curtail the human rights of migrants. The organization has cited violations and abuses of rights regarding border management, asylum procedures, and data collection, such as:

“Under the new system, many people who arrive irregularly, including those disembarked after a rescue at sea, will be detained and channeled into substandard accelerated asylum procedures that strip safeguards available under normal procedure, such as legal aid. Children as young as six years old will be fingerprinted” (Human Rights Watch 2023).

Another important aspect to consider regarding the subject is the duration of the migration and asylum procedures. The deadline for processing requests, as well as for the return procedure to the person’s country of origin, is 12 weeks. This means that vulnerable individuals could potentially be detained in shelters at EU borders for this period (European Commission 2020). Keeping people in vulnerable situations, who have fled from war zones or climate catastrophes, in detention without reason if they do not pose a threat to public order of the member state receiving them, constitutes a violation of human rights.

The General Theory of Human Rights asserts that everyone must be treated with dignity and respect. It addresses the fundamental rights of every human being, which are basic rights that must be followed in both national and international contexts. The Universal Declaration of Human Rights is the principal document that protects human rights. In its Article 9, it states that “no one shall be subjected to arbitrary arrest, detention, or exile”, and in Article 14, number 1, it asserts that “everyone has the right to seek and to enjoy asylum from persecution in other countries” (United Nations 1948).

Following the General Theory of Human Rights, refugees and asylum seekers should not be detained or arrested upon arrival in a new safe location. Countries that are signatories to the Universal Declaration of Human Rights should protect vulnerable populations, always maintaining respect and freedom.

5. Solidarity

The solidarity is also very important in this process of improving the migration issues in Europe. Member states need to show solidarity with the arrival of migrants. For example, if one of the Member States is under pressure and at risk, the Commission will determine other Member States to accept a certain number of asylum applicants who are relocated from a country in crises on its territory. This measure guarantees a European financial support to the receiving Member State and entrust it to provide

the return of the individual who has not been granted asylum (European Commission 2020).

"Migration management is a shared European responsibility" (European Commission 2020). Coordinating the national policies is therefore essential. Many countries in the European Union that receive a lot of migrants and feel burdened can count on the help of others Member States. In relation to migrants rescued at sea and vulnerable people, a project that guarantees solidarity and collective responsibility states that: a) the Commission has the duty to integrate the commitments of the Member States according to a projection of their obligations for each year; b) the Solidarity Forum will be convened if the commitments made are not sufficient; c) if there is a difficult issue to solve, a legal act will be taken to force the Member States to collaborate with relocation; d) if the residences for rescued migrants at sea remain scarce, a correction will be imposed, just as under the normal solidarity mechanism (European Commission 2020).

When it comes to skills and talent, it is important to attract the talented people that the European Union needs. Compared to other countries such as the United States, Australia and Canada, the European bloc is attracting less talent from abroad. Europe is experiencing a skills shortage, as its population is shrinking and aging, and needs to attract young workers to its continent. Thus, there was an agreement for: a) updating the EU Blue Card Directive, which is a residence permit that allows an individual from a third country to reside and develop a qualified activity in European different labor markets; b) revising the Single Permit Directive to simplify the processes involving low-skilled workers or with medium-level qualifications; c) revising the Long-Term Residents Directive to strengthen the rights of workers to circulate and to work in member states of the European Union; d) drawing up a European Union talent pool to ensure a balanced relationship between the European employers and qualified employees who want to live in Europe (European Commission, n/d).

It is also important to incentive international partnerships by: a) supporting other states hosting refugees; b) investing in a labor market close to the migrants' country of origin; c) combating migrant smuggling; d) improving return and readmission processes to encourage voluntary return and reintegration; e) developing legal systems to improve migration regulations. Thus, political partnerships must be established to contribute and to improve the systems that care for immigrants (European Commission, n/d). One theory about this process is the institutionalism that formulates cooperation between states and the protection of their interests (Mendes 2019). This theory is important because the Member States must cooperate with each other to ensure that no single country is overwhelmed and to improve the organization of migrants within the European Union.

In the context of flexibility and resilience, there are effective responses to crisis situations: a) operational support for a member state of European Union, b) solidarity resources; c) investigation of practical problems; d) prompt assistance to persons in need of protection. Another subject is the modernization of procedures to simplify the operations and assure the safety of them. In this way, some measures are established such as a new screening before entry, a management system using the Eurodac database, new asylum procedures at the borders, and finally, when it comes to legal

issues, a new procedure about asylum at the borders has been proposed including the individual assessment of asylum applications (European Commission, n/d). Thus, all Member States must cooperate in solidarity, sharing responsibility for asylum applicants. This new system will have a transition period of three years (European Parliament 2020a).

However, there are challenges that must be observed: a) the protection of European identity, that is, to prevent the migratory waves to impact the European cultural values; b) the criminal prevention, after indicators show that immigration may increase criminal activity. It is important to encourage the socialization of the immigrant in Europe; c) the contribution to productive process regarding the economic and social implications, observing the decrease in the birth rate and the aging of the European population. Losing jobs to immigrants or reducing wages and the increasing of social burdens are concerns of national population (Porto 2020).

6. Conclusão

Observing the new Pact on Migration and Asylum, it is important to highlight the issue of solidarity. In recent years, Europe has received thousands of immigrants and refugees, many of them entered through Greece and Italy. These two countries were extremely overloaded, because the European Union did not provide aid or redistribution of the arriving population in the beginning of the massive migration and assigned all issues related to immigrants under the responsibility of each member state that had received them.

This overload in Greece and Italy was due to the geographical position of these countries. Both countries are closer to the countries in conflict and closer to the Mediterranean Sea, which facilitates the entry of refugees by sea. After realizing that the crisis in these countries was aggravated by the lack of solidarity, Europe decided to redirect the refugees to other member states and created laws to determine equal responsibility for each member state. For this reason, it is important to introduce the Institutional Neoliberal Theory into the European Union discussions on the migration agenda. This will help member states better organize the reception of refugees and asylum seekers.

Nowadays, the asylum analyses consider the applicants' relatives in Europe and the solidarity of the Member States. If the migrants do not have a family connection in Europe, they must go to other countries that still have support do receive refugees. This new process is instituted to the member countries voluntarily. However, if they do not collaborate, they will lose the European Union funds.

To successfully implement those measures, it is necessary a good regularization, so both migrants and the countries that receives them do not suffer negative consequences and have their safety guaranteed. Member States must verify all the asylum applicants to interrupt the access to terrorists or human traffickers hiding among the crowd; and refuges must be sure that they will be received with security and humanitarian aid.

Additionally, the New Pact on Migration and Asylum must ensure that human rights are protected, in accordance with the General Theory of Human Rights. Some gaps discussed in the article that suggest violations of human rights should be taken into account due to dubious actions affecting immigrants upon their arrival in Europe.

Due to the large migration waves to Europe, it is important to develop new rules that align with the new global realities. However, the most important priority is to guarantee the safety of vulnerable populations, such as refugees and asylum seekers, as well as Europeans. New ways of socialization and inclusion in society should be encouraged, along with providing jobs and education for those arriving in Europe. The Pact, aimed at organizing the situation in this new global scenario, is important for a stable European Union. However, it should not exceed the limits of dignity and human rights.

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