Free Movement of Persons as the Cause for Problems to Prevent Threats to National Security

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Abstract

Immigration and free movement of persons has become one of the main questions on the agenda of se-curity institutions all over Europe. These aspects are now taken into consideration when drafting national security conceptions and prevention plans. Experts are defining threats that arise specifically from this phenomena – free movement of persons. Together with this, another problem is outlining – is the current instruments to limit free movement for the cause of national security enough to prevent certain security risks? In this paper author is researching the threats to national security caused by the free movement of persons and views the possibilities to limit these threats. The task of the research is to determine whether today we should understand free movement as it was understood previously and what are the current consequences of this phenomena, what new threats to national security it has caused and what could be done to eliminate these threats.

In the preparation of the paper author uses number of scientific research methods. Author applies ana-lytical method by analysing available literature, laws and other legal documents. Comparative method is used to compare different legal and practical studies. To a certain extent author uses statistical method by considering statistics of crime rates and performing expert interviews.

The results of the research show that existing instruments available to limit free movement of persons for the sake of national security are not enough to prevent complex threats. Europe's expectations that immigration and free movement of persons are one of the core instrument to warm the economy have not been met. Thus Europe is flooded by immigrants that are subjects of threat to national security. Hostile third countries are using existing situation for their advantage and challenge Europe's core values. Current situation in the migration field, refugee crisis, lingering to solve immigration problems and create effective instruments to manage the immigration flows are the aspects that should be con-sidered as a favour to hostile countries.

Solution in this situation could be rising capacities and intensifying counterespionage. Widening the view on conventional migration issues and strengthening the cooperation could be more appropriate to manage identified threats. Another way to manage alternating situation is to create new instruments to limit free movement of persons for the sake of national security and adjusting or creating common legal basis.

KEYWORDS: Free movement of persons, immigration, national security, refugees, threats to national security.

Immigration and free movement of persons has become one of the main questions on the agenda of security institutions all over Europe. These aspects are now taken into consideration when drafting national security conceptions and prevention plans. Experts are defining threats that arise specifically from this phenomena – free movement of persons. Together with this, another problem is outlining – is the current instruments to limit free movement for the cause of national security enough to prevent certain security risks? Author is researching the threats to national security caused by the free movement of persons and views the possibilities to limit these threats. The task of the research is to determine whether today we should understand free movement as it was understood previously and what are the current consequences of this phenomena, what new threats to national security it has caused and what could be done to eliminate these threats.

Author applies analytical method by analysing available literature, laws and other legal documents. Comparative method is used to compare different legal and practical studies. Statistical method is used to consider statistics of crime rates and perform expert interviews.

Due to field of experience author on looks this problem in the light of existing geopolitical situation with the stress to regional policy. The results of the research show that modern understanding of the term free movement of individuals differs from classical comprehension. There are threats to national security that arise specifically from the immigration–related issues. Existing instruments available to limit free movement of persons for the sake of national security are not enough to prevent complex threats.

When looking at the term free movement of persons it should be understood that there is historical or classical and contemporary approach to this subject.

Historically Europe refers to free movement of people as one of the founding principles of the European Union. It gives all citizens of EU countries and their relatives the right to travel, live and work wherever they wish within the EU. European Parliament (Darren Neville) defines freedom of movement and residence for persons in the EU as the cornerstone of Union citizenship, which was established by the Treaty of Maastricht in 1992. The first provisions on the subject, in the 1957 Treaty establishing the European Economic Community, covered the free movement of workers. The Treaty of Maastricht introduced the notion of EU citizenship to be enjoyed automatically by every national of a Member State. It is this EU citizenship that underpins the right of persons to move and reside freely within the territory of the Member States. The Lisbon Treaty confirmed this right, which is also included in the general provisions on the Area of Freedom, Security and Justice.[1] Detailed analysis of historical section is not the aim of the paper and it will be left for another research.

Nevertheless there is another perspective to free movement of persons and to a certain degree we can agree with the senior analysts of European Union Institute for Security Studies who state that nowadays we cannot comprehend principle of free movement just to its classical dimension.[2] If the scope of the term free movement would end with just European citizens than it would be simpler to monitor and control the movement of persons for the sake of national security. But even the Directive 2004/38/EC that establishes the main principles of the free movement of persons also widens the scope of persons who can enjoy the free movement. There it is stated that the right of all Union citizens to move and reside freely within the territory of the Member States

Introduction

Evolution of the term free movement

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1   Neville D., 2016, European Parliament, Free Movement of Persons, *http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_2.1.3.html*

2   Parkes R., 2015, EU Institute for Security Studies, 20 years on: rethinking Schengen, *http://www.iss.europa.eu/uploads/media/Brief_39_Schengen.pdf*

should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality. The definition of "family member" should also include the registered partner if the legislation of the host Member State treats registered partnership as equivalent to marriage.[3]

Another circumstance that makes us reconsider the classical term free movement is The Schengen Agreement. The paper on Schengen area and cooperation determines that the Schengen area represents a territory where the free movement of persons is guaranteed. The signatory states to the agreement have abolished all internal borders in lieu of a single external border. Within the Schengen Area common rules and procedures are applied with regard to visas for short stays, asylum requests and border controls.[4]

Common rules and procedures are applied to short term visas,[5] asylum requests[6] and border control.[7] Those mentioned are covered by EU regulation but there is one more aspect that also complements to the scope of travelers enjoying free movement within the Schengen Area. And those are long term visas or residence/work permits issued by Member states, issuance of which are not regulated by specific common acts.

Taking into consideration above mentioned we can say that the concept of the free movement of persons has changed in meaning since its inception. One of the leading researchers of the University of Lapland (Saara Koikkalainen) uses term free mobility[8] that could be more appropriate to describe the situation in modern Europe. Author considers that free movement or should we say free mobility is synonymous to control–less migration that has led Europe to security threats it has not faced before on such large scale.

Consequential threats

Refugee crisis illegal and legal migration, liberal politics and alternating situation predefines new security risks that arise from liberty to move freely that are now enjoyed by constantly growing number of third country individuals. Europe's expectations that immigration and free movement of persons will be one of the core instrument to warm the economy have not been met. Thus Europe is flooded by individuals that appear to be subjects of threat to national security. Uncontrolled immigration has put new topics on the agenda of security institutions. Due to the immigration crisis terrorism and counterespionage has gained new dimension.

Latvian National Security Conception stresses that since 2011 the geopolitical situation has dramatically changed and now it can be characterised as variable and uncontrollable. Besides conventional threats caused by Russia and instability in Middle East it also mentions refugee crisis and necessity to systematically and methodically control issuance of residence permits to foreigners, finely evaluating the coherence between economic gain and national security.[9]

Immigration as a security threat has now become a topic within political circles. Politicians across Europe hustle to comment on those issues and gain political dividends by stressing the coherence between immigration and terrorism threat. For example, British politicians from The UK Independence Party (Jonathan Arnott) notes that the free movement of people across

3　　Directive 2004/38/EC of The European Parliament and of The Council of 29 April 2004, *http://eur–lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF*

4　　Schengen Agreement, *http://eur–lex.europa.eu/legal–content/EN/TXT/?uri=URISERV:l33020*

5　　Regulation (EC) No 810/2009 of The European Parliament and of The Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), *http://eur–lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:en:PDF*

6　　Concil Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third–country national, *http://eur–lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF*

Europe is a "security risk" and refugee crisis provides terrorists with an opportunity to infiltrate Western Europe.[10]

The fact that immigration is taken for advantage by international terrorists is confirmed by security institutions throughout Europe. The senior NATO commander in Europe (US Gen Philip Breedlove) said that Russia and Syria are deliberately using migration as an aggressive strategy towards Europe, they are "weaponising" migration to destabilise and undermine the continent. He also suggested that criminals, extremists and fighters were hiding in the flow of migrants.[11] The head of the German domestic intelligence agency Hans–Georg Maassen has urged refugees to help identify terrorist suspects and risks.[12] This idea is also promoted by journalists and scientists.[13] On the other hand such attitude causes social concussions and tension resulting in xenophobia, racism, hate crimes, etc. For example in Germany the vast majority of the 1,610 crimes committed against refugees and refugee housing in 2015 is almost double to the figure identified in 2014, when 895 crimes of this type were recorded.[14]

However there is another aspect that should not be left uncovered – existing situation can be exploited by secret services of hostile third countries causing security threats that European countries have not faced on such extensive scale. There are already European countries that point out Russia's efforts to use Europe's liberal approach to migration to launch their covert operations on the European soil. For example Swedish Security service SAPO in its 2014 annual report stated that Russian intelligence services collected information on Sweden's defense policy, technologies and scientific research, economics and refugee policy. Russian reconnaissance operations were aimed at Swedish militaries, police officers and immigrants.[15]

Several experts of the security field in the interviews confirmed that immigration is typical cover for spies and now in the times of migration confusion it is used most widely not only to gather intelligence but also to infiltrate "right persons" into "right countries".[16] Current situation in the migration field leaves us with the possibility that an agents can be legalized in the Italy and work in Latvia or, for example, in Lithuania. Together with that diplomatic cover is still widely used in the Baltic and Scandinavian region.[17]

7   Regulation (EC) No 562/2006 of The European Parliament and of The Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), *http://eur–lex.europa.eu/legal–content/EN/TXT/?uri=celex:32006R0562*

8   Koikkalainen S., 2011, Free Movement in Europe: Past and Present, *http://www.migrationpolicy.org/article/free–movement–europe–past–and–present*

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10   Wearmouth R., 2015, Paris attacks: Free movement of people policy presents security risk to Britain, says UKIP, *http://www.chroniclelive.co.uk/news/north–east–news/paris–attacks–free–movement–people–10448594*

11   BBC, 2016, Migrant crisis: Russia and Syria 'weaponising' migration, *http://www.bbc.com/news/world–eu-rope–35706238*

12   Reuters, 2015,Informers needed, says German intelligence agency head Maassen, *http://www.dw.com/en/in-formers–needed–says–german–intelligence–agency–head–maassen/a–18911013*

13   Kūrēns M, 2015, Netālredzīga migrācijas politika un nesavienojamu civilizāciju sadursme (intervija ar Prof. Leonu Taivānu), *http://apollo.tvnet.lv/zinas/netalredziga–migracijas–politika–un–nesavienojamu–civilizaciju–sadursme/678347*

14   The Local.de, 2015, Attacks on refugees double in a year: police, *http://www.thelocal.de/20151215/attacks–on–ref-ugees–double–in–a–year–police*

15   Swedish Security Service, 2015, Security Service Yearbook 2014, *http://www.sakerhetspolisen.se/en/swedish–se-curity–service/about–us/current–events/news/2015–03–20–security–service–yearbook–2014.html*

16   Author's interwiev of two security field experts (identity of the sources can not be uncovered)

17   Estonian Security Police KAPO, 2014, Annual Report 2014, *https://www.kapo.ee/en/content/annual–reviews.html*

One of the conclusions of the research is that hostile third countries secret services gather information on strategic fields of the European countries, meaning – perform classical espionage – and use it for their advantage and challenge Europe's core values. Within the research it was established that certain secret services are closely linked to our region and they directly execute the foreign policies of several hostile countries, destabilize the situation in the region, promote schism in the society and diversely contribute to ruin the ground basics of the European Union. Current situation in the migration field, refugee crisis, lingering to solve immigration problems and create effective instruments to manage the immigration flows are the aspects we can consider as a favour for these hostile countries.

Instruments to limit free movement

In the course of the research author comes to conclusion that appropriate restrictions to the free movement of persons could be the solution for European countries to limit the threats that now appear due to massive immigration flows. European countries should not only re-think using classical instruments but also consider new ways to fight immigration problems. As the analysts at European Institute for Security Studies state the world has now changed, and the EU finds it far harder to leverage free movement in order promote its core values. Nevertheless, this novel international environment again requires an innovative response, rather than replicating at an EU level the classical attributes of a national model.[18]

Another mistake Europe can make instead of open–minded approach it can transform to policing society by solving problems with prosecution methods. There we can agree with professor of Stockholm University (Vanessa Barker) that current refugee crisis in Europe is a failure of political will and a moral failing to stand up for fellow human beings. The inability of Member States to agree on a comprehensive plan of action exposes deep divisions within the EU not only about immigration policy but about core values within the European Union. The principles of free movement and human rights, principles that have been at the heart of European integration and self–identity, are severely strained as some Member States put up razor fences, introduce temporary border checks in free movement zones, dissuade refugees from coming, or in other ways deny access to the EU. This retrenchment stems in part from a more regressive stance towards migrants that has been developing across the EU for a number of years and identified as crimmigration, the intermeshing of crime control with migration control.[19]

Nevertheless, considering the above, it is clear that limiting the free movement still will be one of the widely used instruments. The ground act that determines free movement of persons also include limitations to it defining that one of the core freedoms in Europe can be limited for the sake of security. Directive 2004/38/EC states that expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons therefor scope for such measures should be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin.[20] Author considers that proportionality should be the main principle when evaluating limitation to free movement but nevertheless security of citizens should prevail the interests of a single person being the subject to limitation of free movement. This evaluation is now solemnly left with national experts in Member States.

Led by the common spirit of EU, author considers that the practical (physical) limitation of free movement should be left to be executed by experts in Member States but general pro-

visions must be given by European Union. Eurobarometer poll also shows that as the immigration and terrorism have become EU citizens' fastest–growing concerns, average of 66% of respondents said that more decisions on migration should be taken at EU level, rather than by national governments alone.[21]

Another question that should be on looked is Schengen Agreement. Will abolishment of the agreement solve current problems or it will become one more manifestations of lost values of EU? There are numerous announcements that EU governments have placed a large question mark over the future of Europe's passport–free travel zone, signaling an extension of national border controls within the 26–country Schengen area in response to the immigration crisis. Prominent ministers openly ask to extend and prolong the border controls launched due to necessity or even predict the collapse of Schengen.[22]

During the research author came to conclusion that in the terms of proportionally simple collapse of Schengen would solve the immigration crisis and its consequential threats to national security but at the same time this would leave disruptive influence on EU. Much more appropriate would be to concentrate on common values and work to achieve fluent cooperation and find new instrument to pro–actively react on modern security situation.

Europe will be as strong as the weakest element in its security system. That determines timely and precise exchange of information as the core component to successfully eliminate the risks.

On the one hand it is approved by Member states that better cooperation would complement the security situation but practical aspects to this are not that simple. For example, the Paris attacks appeared to show that jihadists could seemingly move freely across borders while the information required to stop them did not. At EU summit, leaders promised to improve the fight against terrorism and to improve co–ordination.

Security and intelligence services are intrinsically secret organisations closely allied to national power and priorities. Sharing data with all the other countries in the EU is a far more ambitious goal. Many security services will fear that their secrets will not always be kept when so many are involved. In some countries, security services are also less well–resourced and less experienced. Poor border controls, unsystematic approach to watch listing individuals and flow of weapons are key points deepening the problem.[23]

Author concludes that rising capacities and intensifying counterespionage would be conventional answer to modern security threats. But widening the view on conventional migration issues, strengthening the cooperation and finding new common solutions and instruments to legitimately limit free movement of persons could be the better answer to manage this constantly evolving threat.

18   Parkes R., 2015, EU Institute for Security Studies, 20 years on: rethinking Schengen, *http://www.iss.europa.eu/uploads/media/Brief_39_Schengen.pdf*

19   Barker V., 2016, Reflection on Dutch Border Practices, *https://www.law.ox.ac.uk/research–subject–groups/centre–criminology/centreborder–criminologies/blog/2016/02/reflections–dutch*

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23   Corera G., BBC, 2016, Why intelligence sharing still has a long way to go, *http://www.bbc.com/news/world–europe–35154640*

Conclusions

_ Term free movement of persons has historical or classical and contemporary approach to this subject. Typically we use it to speak of migration of EU citizens, but current situation determines that the scope of travelers is much larger.

_ Common directives and Schengen Agreement are main sources complementing to the scope of travelers enjoying the freedom of movement within Europe beginning with family members regardless their citizenship and ending with short term visa applicants and refugees moving within Europe. Author considers that free movement is on the verge to be compared with uncontrolled migration.

_ Term free movement has gained new dimensions with the evolution of European Union. Circumstances under which this term originated has changed. The creators of the idea of free movement did not envisage current situation with massive immigration flows, terrorism threats and invasion of completely different civilisation with distinguished culture and values.

_ It is clear that existing situation requires the change of attitude towards the traditional concept of free movement. It is necessary to create mechanism that allows us to react on coming threats but at the same time maintain European core values and freedoms.

_ Refugee crisis illegal and legal migration, liberal politics and alternating situation predefines new security risks that arise from liberty to move freely that are now enjoyed by constantly growing number of third country individuals.

_ Expectations that immigration and free movement of persons will be one of the core instrument to warm the economy have not been met. Instead immigration has become new topic on the agenda of security institutions.

_ Immigration is taken for advantage by international terrorists and hostile third countries that expand their covert operations in Europe.

_ Hostile third countries secret services gather information on strategic fields of the European countries and use it for their advantage and challenge Europe's core values.

_ Current situation in the migration field, refugee crisis, lingering to solve immigration problems and create effective instruments to manage the immigration flows are the aspects that should be considered as a favour for hostile countries.

_ Appropriate restrictions to the free movement of persons could be the solution for European countries to limit the threats that now appear due to massive immigration flows.

_ When reacting on current situation the problem is that national interests still prevail common interests of the Union. Member states struggle to understand each other and each countries regional policies. Instead of expanding the view and working together EU fails to embody it core values with that giving advantages to euro–sceptics and Russia.

_ Proportionality should be the main principle when evaluating limitation to free movement. Security of citizens should prevail the interests of a single person being the subject to limitation of free movement.

_ Practical (physical) limitation of free movement should be left to be executed by experts in Member States but general provisions must be given by European Union.

_ Simple collapse of Schengen would solve the immigration crisis and its consequential threats to national security but at the same time this would leave disruptive influence on EU. Much more appropriate would be to concentrate on common values and work to achieve fluent cooperation and find new instrument to pro–actively react on modern security situation.

_ Cooperation between services responsible for national security is cornerstone of common security in Europe. As there are no limitations to flow of individuals there should not be limitations to the flow of information performed in mutual trust and support.

_ Rising capacities and intensifying counterespionage would be conventional answer to modern security threats. Widening the view on conventional migration issues, strengthening the cooperation and finding new common solutions and instruments to legitimately limit free movement of persons could be the better answer to manage this constantly evolving threat.

_ Existing mechanisms to limit free movement of individuals (expulsions, deportations, etc.) can be complemented with new instruments. For example, notice about possible expulsion. Such measure would not seriously harm person but at the same time will distinctly show that Europe's hospitality should not be taken for granted.

_ Europe should rethink current integration policy. It should be understood that we are facing different civilisation with different values and attitudes. Guests entering Europe have other understanding of assistance and relief. Europe should clearly outline that security it provides is not our responsibility but more of a hospitality. Immigrants should be noticed that European freedoms and value come together with European responsibilities and obligations. Integration policy should be proactive instead of reactive meaning that immigrants already before coming to Europe should understand that Europe is open but they themselves should be responsible for peaceful and prosperous living here.

_ Given right instruments for the socialisation of immigrants countries could follow the integration process of refugees tracing their progress as socially responsible beings. As an opposite it is seen currently when countries fail to find appropriate way to integrate immigrants. That leads to formation of conclaves that cannot be accessed even by law enforcement institutions.

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