

Measures for Limiting Corruption upon Migration Wave in Europe

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Abstract—Fight against migrant smuggling has been put as a priority issues at the European Union policy agenda for more than a decade. The trafficked person, who has been targeted as the object of criminal exploitation, is specifically unique for human trafficking. Generally, the beginning of human trafficking activities is related to profit from the victim's exploitation. The objective of this paper is to present measures that could result in the limitation of corruption mainly through analyzing the existing legislation framework against corruption in Europe. The analysis is focused on exploring the multiple origins of factors influencing migration processes in Europe, as corruption could be characterized as one of the most significant reasons for refugees to flee their countries. The main results show that law enforcement must turn the focus on the financing of the organized crime groups that are involved in migrant smuggling activities. Corruption has a significant role in managing smuggling operations and in particular when criminal organizations and networks are involved. Illegal migrants and refugees usually represent significant sources of additional income for officials involved in the process of boarding protection and immigration control within the European Union borders.

Keywords—Corruption, influence, human smuggling, legislation, migration.

I. INTRODUCTION

FACTORS influencing migration processes have multiple origins. Mostly influential factors are related to economic, social and political circumstances. It is possible, influential factors occur in the migrant's country of origin, and in that case, such factors are called push factors. Whenever the influential factors are occurring at the country of destination, then such factors are called pull factors. In cases when the crossing of a border occurs under violation of entering conditions of another country of without obtaining proper authority permission, irregular migration is observed. Such kind of migration is directly related to human trafficking or smuggling. In such activities, smugglers and traffickers obtain significant profits from people who are trying to enter into European territory [1].

Restriction mechanisms for combating illegal transnational groups activities directed to immigration violations form a top priority issue for the European Union policymakers.

Human smuggling and human trafficking could be categorized as criminal activities, which are traditionally are related to additional crimes. Examples of such related crimes include fraud, bribery, human rights abuse, exploitation,

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extortion, coercion and human rights violation. Such crimes can result to restrictions of certain additional human rights such as freedom of movement and freedom of labor.

Human trafficking and human smuggling are two phenomena that differ from each other, although the circumstances which cause them are often similar. Such circumstances could be expressed as lack of economic opportunities, poverty and political uncertainty. Trafficking and smuggling also have common characteristics due to the fact that victims of smuggling could easily become victims of human trafficking which puts them into risky conditions. Such conditions could result in physical abuse, sexual violence and extortion [2].

The phenomenon of human smuggling could be expressed under various forms, regarding the type of person who crosses another country's border in violation of legal regulations. Illegal immigration is always present in migrant smuggling, and it is always illegal. The reasons for those various forms of illegal immigration are often related to natural disasters, escape from war scenarios or political persecutions. Sometimes the reasons for illegal immigrations could be related to opportunities for better economic circumstances. Typically, both for human smuggling and human trafficking are the fact of movement of people from one location to a certain destination, and the distinguishing term is the presence or absence of consent of the person being relocated.

The condition of human smuggling has been characterized as facilitation or transportation or even the attempt of such activities or illegal entry across international borders. It is always performed under violation of international law regulations and usually involves the use of fraudulent documentations. Typically there is a consensual relationship between the migrant and the smuggler.

In cases of human trafficking, the trafficked person has been targeted as an object of illegal exploitation which results in profit from such an activity. Human trafficking is usually based on fraud or force and it not characterized by consensual behavior between the victim and the trafficker.

II. CORRUPTION IN RELATION TO MIGRATION

When criminal networks and criminal organizations perform their activities in relation to migrant smuggling, corruption usually plays a significant role.

Corruption is a factor which has a negative influence on the prevention, detection, and investigation of migrant smuggling. It also negatively influences the prosecution of activities involving migrant smuggling. In systems where public officials are being corrupted, activities such as border

protection and immigration control are being sabotaged, while law enforcement is being violated. The private sector is not being excluded from cases of corruption, where it has been observed to serve as facilitating mechanism for illegal entry into national borders for migrants. Most cases include the use of fraudulent identity documents or violation of national permit residence regulations and illegal stays in foreign countries.

Smugglers focus on groups of people such as refugees, who need to be specially protected under international law. Migrants who become the victim of smuggling may also become victims of additional crimes during the process of smuggling, particularly in cases when the victim's consent to be smuggled does not include consent for participating in other types of crime. These are situations where migrants, involved in smuggling are vulnerable and their lives and health are in danger.

The international legal framework in regard to the United Nations Convention against Corruption (UNCAC) prescribes the criminalization of corruption manifestation and also the characteristics of different forms of corruption [5].

Various forms corruption in which the process could be observed includes trading of influence, bribes, abuse of functions and all these forms, which are characterized as serious crimes, could be related to migrant smuggling.

According to the UNCAC, the bribery activity is defined in articles 16 and 21, as the act of conferring a benefit. Such benefit results improper influence for an action or a decision. The term "bribe" could be characterized as a payment by a public official from an unwilling member of the public. This payment is extracted by a public official, before the citizen can receive the service to which the person is entitled.

It is possible for corruption activities to occur either at high government official level or at low governmental levels. Cases of corruption occur even when officials are not personally involved in smuggling activities, but they actually share profits from criminal activities related to migrant smuggling.

Law enforcement activities and those involving border controls are being influenced by corruption which is particularly difficult to control regarding the fact that international legal instruments, such as UNCAC, define trade influence as an activity involving a promise or offering, or giving directly or indirectly, to an official or to another person an advantage which is undue. The reason being is to get that person to abuse their influence for to the undue advantage for oneself. Trading of influence might in some cases involve acceptance of undue advantage by a public official.

The performance or the failure to perform an activity by public servant, within the act is against the law, and when the performance of such an act is in the discharge of his or her functions, for the reason of obtaining some undue advantages is called an abuse of functions or an abuse of position. The obtaining of the undue advantage must be for the public official or for another person or even for another personal gain.

Imbalance of power exists between the migrants and the people who are facilitating the movement from one place to

another, because of the fact that corruption is directly related to the vulnerable position of the migrants who are being smuggled [3].

Cases of corruption may occur in the country of origin of the migrant, or in the transit route, or at destination, and these corruption activities are usually systematic, but it can also be individual or even institutional. It is also specific that such corruption can occur at various points of the smuggling venue. Corruption could even occur in circumstances when smuggled migrants have been apprehended to extort additional money from the smuggled migrants themselves or from their relatives [4].

In situations when public officials are being corrupt or the law enforcement system does not function properly, corruption cases serve as facilitating mechanisms for most criminal activities related to human smuggling, containing transnational elements. Every step along the route, from the country of origin to the final destination, could show complications because of corrupt officials, or weak border protection measures.

Bribery and corruption in general could occur in various stages along the process of smuggling and usually human smugglers have to pay bribes to national public officials and to international public officials along the transit route; generally at the entry point and at exit point, public officials are being paid. Additional payments are being performed for necessary documentation, visas forms, and permits for stay in a foreign country.

Usually, some form of additional income or a type of renting is performed in transit and in destination countries, under the case of bribe acceptance, where public officials are being underpaid. In that case, border protection officials and immigration control servants are being financially stimulated and form significant additional income based on illegal migration activities and refugee smuggling.

Dealing with smuggling related to corruption is a factor for sufficient border control mechanism, the international legal framework exists and all parties under the Migrant Smuggling Protocol have adopted rules for transport operated by commercial carriers from being used in the communication of smuggling offenses.

Criminal international operations including offences of migrant smuggling, often involve evidences located in two or more countries. This situation provides the opportunity for criminal investigations to be initiated in multiple jurisdictions.

Certain social groups such as border protection officials, consular servants, law enforcement officials, could sometimes be involved in risk situations of corruption more severe than other social groups related to other activities. Sometimes the occupied position or their functions make them vulnerable to acts of corruption and forms of transnational crime.

Corruption, along with violence and instability, could become significant factor when migrants take decision to move from one country to another.

Civilian uprising against corrupt governments often could escalate into armed conflicts, as a result of which many people are forced to leave their homes and become refugees, which is

the case in Syria, where a great refugee wave has moved towards Europe. Wherever there is corruption, it is usually in turbulent territory.

In most cases, corruption tends to prolong armed conflicts and acts of violation, such as through the efforts of cross boarding smuggling of weapons.

III. LEGISLATION FRAMEWORK AGAINST CORRUPTION IN EU

It is crucial to the end conflicts that are forcing people to leave their homes, and the fight against corruption can provide positive results on dealing with migrating refugee smuggling. That is why the fight against corruption has become an issue of top priority on the European Union agenda in relation to the refugee crisis.

The application of proper anti-corruption standards, which are in line with approved best international practices, should be ensured by transit countries on the frontline of mass migration. An example of transit countries include Bulgaria, Italy, Greece, Hungary, Macedonia, Serbia, Slovenia, Turkey, where police officials and border control personnel must be especially strict on anti-corruption standards application in relation to migration activities.

Cases with a presence of weak legislation and an institutional framework for tackling corruption can use the option of relying on international instruments for dealing with the issue. Such instruments for tackling corruption include the UN Convention on Corruption and the Council of Europe Civil Law Convention on Corruption.

As part of the Council of Europe framework, a special monitoring mechanism was put in place in 1999 by 17 countries. This monitoring mechanism is called Group of States against Corruption (GRECO); its aim is to improve the capacity for fighting corruption. This improvement could be achieved via mutual evaluation and peer pressure. It has been set, according to the EU Stockholm Programme and the Lisbon Treaty that the European Union should become member of GRECO. This provides the opportunity for the EU to be part of the GRECO evaluation and provides for the establishment of higher standards in the fight against corruption at the EU level.

As part of the fight against corruption mechanism, the European Union established the European anti-fraud office in 1999, under the name of OLAF, with priority of assisting European Union member states in the fight against corruption, fraud and other related criminal offences. OLAF has competencies in the investigation of allegations of fraud and other illegal activities involving members and staff of European Union institutions. This may result in disciplinary and criminal proceedings against those charged with allegations of corruption.

An Intergroup on Integrity, Transparency, Corruption and Organized crime was established in 2014 as a tool for dealing with the persisting corruption practices. The group has developed a program for setting lobbying rules which are transparent in order to combat organized crimes with transnational elements. This group is a complement to CRIM, the Committee on Organized crime, Corruption and Money

laundering established in 2012 with the task of evaluating EU legislation on organized crime and corruption, in relation to its implementation by EU member states. This activity has been set in cooperation with the Standing Committee on Operational Cooperation on Internal Security (COSI), as well as Europol.

European Union tools and mechanisms are complemented by European anti-crime agencies, and according to the Lisbon Treaty, the fight against crimes affecting EU interests should be evolved into the European Public Prosecutor via Eurojust.

As part of European Union policy, the issue of dealing with migrant smuggling, helps tackling irregular migration. This mechanism has been in place for more than a decade, when the EU adopted a legal framework on smuggling. This framework includes decisions on the strengthening of the penal framework, resulting in the prevention of unauthorized entry, transit and residence within the European Union. Positive results could be accomplished when law enforcement authorities take operational measures with the support provided from EU agencies. This will upset the activities of groups dealing with organized crime activities which facilitate irregular migration. This irregular migration, according to the official data, flows by sea, mainly along Central and Eastern Mediterranean routes. According to Frontex data from 2015, this irregular migration has been increased of 310% in comparison to 2013. Cases where migrants are exposed to life-threatening conditions and situations of violence requires strong response by competent authorities, and as an example of that, approximately 3,000 migrants are estimated to have lost their lives while trying to enter the European Union from the Mediterranean Sea in 2014 alone [6].

The priority of the activities related to the fight against smuggling was put forward once again in 2015 by the adoption of the European Agenda on migration. The main goal is the prevention of migrant exploitation by criminal networks and the reduction of irregular migration initiatives.

Another document adopted in 2015 was the European Agenda on Security, which highlights as a priority, the need for cooperation against the smuggling of migrants across European Union borders.

The business of smuggling of migrants is a profitable activity; however, data on the profits obtained by smugglers is not available, although isolated cases of such information shows that the amount of profit is significant.

IV. MEASURES FOR LIMITING CORRUPTION INFLUENCING MIGRATION WAVE

Weakening criminal networks involved in the smuggling of migrants requires proactive financial investigation activities, where actions against money laundering are crucial. That is why cooperation between the European Union and financial intelligence units, as well as other relevant networks could be successful in regard to the fight against migrant smuggling.

Law enforcement must turn the focus on the financing of the organized crime groups which are involved in migrant smuggling activities. The issue must be prioritized in relation to targeting money connected to the smuggling of migrants as

regard to the National Asset Recovery Offices (AROs) and CARIN – the Camden Asset Recovery Inter-agency Network. Also, cooperation with financial institutions such as credit transfer service providers, banks and credit card issuers must be set as a priority in relation to tracking assets connected to the smuggling of migrants. Significant cooperation of the European Union with third party countries should be strengthened in regard to the confiscation of proceeds in the countries of origin of migrants and the country of transit as well.

The strengthening of support capacity building is essential for the law enforcement authorities via the use of joint investigation teams and the provision of mutual assistance between EU member states in cases of migrant smuggling. A strong contribution to that could be undertaken by Eurojust in regard to mutual legal assistance in criminal matters.

It is essential for the development of close cooperation mechanisms across the entire route in order that migrant smuggling could be targeted and ended through effective investigation activities and prosecutions [7].

V.CONCLUSION

In circumstances when people seek fewer services of migrant smuggling networks, their activity will be weakened. That is why it is important to introduce safer legal means to enter into the European Union, and any efforts aimed at cracking migrant smuggling should be matched by efforts of returning those migrants who have been smuggled into European Union countries. Migrants are less likely to pay high price demanded by smugglers to get them into a European Union country if they are aware of the possibility of being returned to their home country upon reaching their destination.

Upsetting the business model of migrant smuggling can be achieved through the goal of transforming migrant smuggling into a high-risk and low profit activity; in that way, the perpetrators could be brought to justice. However, in order for that to be achieved, the capacity of European Union member state countries, as well as the capability of European Union agencies to provide support, needs to be enhanced. That requires a strong coordination between law enforcement structures and the judiciary structures within the European Union, as well as the introduction of a multiagency approach.

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