

Description for the general public

The scientific aim of the project includes an in-depth analysis and an assessment of the effectiveness of the present legal instruments concerning security management in the area of asylum and return policy in the EU. It also proposes that the right to migratory security should be categorized as the right of the third generation. Finally, it includes an analysis of the level of protection of migratory security in EU law.

The EU has experienced an increased influx of migrants since 2011, and since 2015 it has evolved into a real migration crisis, resulting in 1 382 155 people arriving in EU Member States in search of international protection. Intensive migration necessarily entails threats to security in various aspects: social, political or cultural.

In accordance with the thesis of the project, there is an overriding principle of security priority, valid on both the level of policy-making on migration within the EU, as well as migratory legislation on granting protection to third-country nationals and their returns. In the face of the migration crisis, the security principle has received increased support and stronger implementation.

Moreover, it should be assumed that there exists a right to migratory security, which is a third-generation solidarity right in the doctrine of human rights. This right is of a two-fold character: firstly, it protects the receiving society from the threats resulting from migration flows; secondly, non-voluntary migrants have the right to seek protection in a safe way. This law can be reconstructed on the basis of the relevant provisions of primary and secondary EU law and the case-law of the EU Court of Justice in the area of asylum and returns of third-country nationals to their country of origin, and especially the case-law of the ECtHR. The protection of the right to migratory security is superior to derogational fundamental rights of third country nationals in case of conflicting laws. Thus, certain human rights which migrants are entitled to – including freedom of movement, might be derogated due to the necessity of providing security to migration processes and the protection of the receiving society.

The project will include an analysis of the following materials: political documents adopted by the European Council, multi-annual programmes, the European Commission documents and legal acts building the asylum law (CEAS, that is the Common European Asylum System – directives, regulations and other relevant secondary legislation) and the legislation in the field of returns of third-country nationals to their country of origin. Apart from that, the analysis will comprise legal and executive acts underpinning the activities of two major EU migration agencies – Frontex and EASO, together with the case-law of the EU Court of Justice and selected case-law of the ECtHR.

The research planned in the project will initially include an analysis of the existing standards with regard to the priority of security in the asylum and return policy and defining the conceptual scope of the term of security management principle. Further, it will include an analysis of the evolution of the implementation of the migratory security principle after 2011 and an examination of the creative role of the European Council in the field of migration policy. The next stage will include defining and creating a law model for migratory security as a third-generation law. The analysis will also contain an examination of the interdependence between the strengthening of migration security policy and derogation of protection of migrants' fundamental rights in the current legal system. The project also intends to investigate the implementation of the systemic principle of migratory security within the competences of EU administration, especially in the activities of EU migration agencies: Frontex, EASO and eu-LISA, as well as an analysis of the case-law of the EU Court of Justice in the Area of Freedom, Security and Justice, with a view to defining a jurisdiction standard of the migration security law.

The results of the research will have a significant impact on European migration law and human rights. They will facilitate a thorough analysis of the functioning of the management of migratory security principle as third-generation human right (collective principle). The effects of the project will contribute to international discussion on the subject of legal certainty in the era of European migration crisis and the future of European migrations and guarantees of protection accompanying migration law.