THE IMPACT OF MIGRATORY FLOWS OF THIRD COUNTRY WORKERS ON EU ENLARGEMENT POLICY

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Abstract: The free movement of workers is one of the four freedoms of the EU Internal Market. Migrant workers who move from one state into another enjoy certain rights stipulated by the EU Law (acquis communautaire). The aim of this article is to make a comparison between the rights enjoyed by the workers from EU member states and third country workers, in particular from Turkey and the Republic of Macedonia. This paper examines the possible effect of the enlargement of the European Union on Western Balkan countries and Turkey with respect to the freedom of movement of workers in the context of the impact of previous EC enlargements on migratory movements.

Keywords: enlargement policy, migration flows, transitional measures

Free movement of workers in EU- what does it mean?

The central legal questions concerning free movement of workers include the direct effect of article 39 (ex. article 48 from the Treaty establishing the European Community), the meaning of the term migrant worker, certain rights of family members of the migrant worker's family, such as reserved places in the public sector for national workers. The Treaty of Amsterdam in article 13 stipulates general antidiscrimination clause providing new bases for fighting against discrimination. The European Union adopted an important secondary regulation regarding freedom of movement of workers. The most important secondary legal act until recently was the Regulation EEC No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.[1] Recently the Council Directive 2004/38/EC of the European Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States was adopted.[2]The greatest achievements were the Blue Card Directive[3] and the Directive providing minimum standards on sanctions and measures against employers of illegally staying third-country nationals.[4]The European Court of Justice played an important role in interpreting the meaning of article 39 on the free movement of workers. The Court constantly points to the meaning of the free movement of workers and realization of the principle on nondiscrimination based on nationality. Article 12 of the TEU explicitly forbids any form of discrimination based on nationality when putting into practice the Treaty articles. The definition of the term worker was of a major interest to the European

Community. In the Hoekstra[4] case the European Court of Justice interpreted that the definition of the term worker is not a question of the national law of the Member State, but it is in the interest of all Member States to interpret this term uniformly, which is crucial for establishing the Internal Market.
The most important goal of the Internal Market cannot be achieved if the term migrant worker is defined by the national law of each Member State. This claim covers two significant aspects. Firstly, the Court gives the term migrant worker communitarian meaning which means that the Court gives directions for its application in all Member States. Secondly, the Court interprets this term extensively because the realization of the free movement is one of the four freedoms and a condition sine qua non for the realization of the Internal Market.

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[1] *OJ L 257, 19/10/1968 P 0002-0012*
[2] *OJ L 158, 30/04/2004*
[3] *Council Directive 209/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment, OJ L 155/17 4 OJ L168/24*
[4] *See Hoekstra v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten, Case 75-63, ECJ 10 December 1963*

Rights of migrant workers

Article 39 of the EC Treaty entails important rights for migrant workers when moving from one to another Member State:

- the right to look for a job in another Member State;
- the right to work in another Member State;
- the right to reside there for that purpose;
- the right to remain there;
- the right to equal treatment in respect of access to employment, working conditions and all other advantages which could help to facilitate the worker's integration in the host Member State.

Migratory flows of third country workers

A Turkey-case study

The status of non-EU workers was also an important issue for the European Union. The issue was primarily regulated through bilateral agreements between the European Community on one hand and the country of origin of the worker on the other. According to Association Agreements, non-EU citizens have a privileged status as workers or self-employed in the Member State of the European Union. Turkey has a long history of economic ties with the European Union, established in the 1960s with two significant events. Turkey signed the Labor Agreement with the European Union and later re-strengthened the relationship with the signing of the Association Agreement in 1963. Turkey became a part of the Customs Union in 1996. A major milestone in the building of ties between Turkey and European Union came along in 1999 at the Helsinki Summit where Turkey was given a candidacy status for becoming a Member State of the European Union. Regarding the labor market the most important act is the Decision 1/80 of the Association Council based on the article 12 of the Association Agreement. The European Court of Justice ruled that the Decision 1/80 had a direct effect on the national law of the Member States of the Union. This Decision provides that Turkish workers duly registered in the labor market of the Member State have an equal treatment in respect of access to employment.
Germany has the highest population of Turkish immigrants in Europe with three million residents having at least one Turkish parent, according to a January 2015 BBC News report. Turks came to Germany through guest-worker programs in the 1960s and '70s before a second period of immigration began, driven by the reunification of families which greatly heightened the number of Turks in the country. The "third and current phase is characterized by German-born members among Turkish families" as well as "the importing of spouses by young Turks from rural areas in Turkey because Turkish women from local German communities are considered to be too Western".[5][6]
The rise of Islamic State in Iraq and Syria put Turkey at the center of a conflict that has global consequences. Some European officials, including French foreign affairs minister Laurent Fabius and their US counterparts believe allowing Turkey to become a member of the EU would create a strong ally in the fight against terrorism in the region. But critics such as Conservative MP David Davis argue the open movement laws could create a passageway both in and out of Syria for jihadists and new recruits.[7]

The rights of Turkish workers

The European Court of Justice ruled that article 6 of Decision 1/80 allows progressive implementation of Turkish workers on the labor market in the Member State. Article 6 of Decision 1/80 provides important rights for workers who have not been duly registered in the labor market in the Member State:

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[5] *Katzenson, Elie (2016) "The Patterns and Impacts of Turkish Immigration to the European Union," Claremont-UC Undergraduate Research Conference on the European Union: Vol. 2015, Article 6. DOI:*

[6] *.5642/urceu.201501.06 Available at: http://scholarship.claremont.edu/urceu/vol2015/iss1/6*

[7] *http://www.theweek.co.uk/24083/turkey-and-the-eu-the-pros-and-cons-of-membership* [8] *Article 6 of Council Decision 1/80*

Turkish workers who are duly registered in the labor market enjoy several rights: After one year of legal employment they will be entitled to renew the work permit for the same employer if the position is available
After three years of legal employment, they can respond to another employment offer of their choice, if the offer has been made under regular conditions and published in the employment services in the Member State
The right to free access to any paid work of his choice, after the expiry of 4 years of legal employment.[8]
It is not clear if the worker enjoys the right of family reunification with the family members in the Member State of residence. The Court ruled that this is one of the basic rights of third country workers based on the decisions of the Association Council and Family Reunification Directive.[8]
Family members of Turkish workers who are duly registered in the labor market have the right to:
respond to any offer after legal residence of minimum 3 years in the Member States; to enjoy free access to any genuine employment if they are legally employed for at least 5 years.
The following rights can be enjoyed by family members if they accompany a Turkish worker who has legal residence in a Member State in accordance with article 7 of Decision 1/80. Family members of Turkish workers may be qualified as workers regardless to the family relations if they have access to the labor market.

Republic of Macedonia – a case study

Republic of Macedonia was the first of the Western Balkan countries to sign the Association agreement with the European Union in 2001. The current legal framework for the freedom of movement of workers between the Republic of Macedonia and the European Union is regulated through the provisions of the Stabilization and Association Agreement. The freedom of movement of workers is regulated by Chapter V of the Agreement: Movement of workers, establishment, provision of services, capital. The first part of Chapter V is entitled: Movement of workers (Articles 44-46) which stipulates that nationals of the Republic of Macedonia legally employed on the territory of a Member State shall be exempt from any discrimination on a national basis regarding the working conditions, benefits or dismissal. The Republic of Macedonia, on the basis of the principle of reciprocity, will also treat the nationals of the particular Member State when employed on the territory of the Republic of Macedonia equally, regardless of the nationality of the worker. Unfortunately, the Employment Agency, the State Statistical office and the Emigration Agency of the Republic of Macedonia do not have any official data on the number of workers working abroad. The Emigration Agency can only provide data on the number of Macedonians living abroad. Since most of them leave the country for work purposes or family reunification, it can be indirectly concluded that the biggest number of Macedonian workers are living in Germany, Italy and Switzerland.[9]According to the final report of the European Commission on the progress of the Republic of Macedonia towards EU membership, there has been poor progress regarding freedom of movement of workers. Approximation of the Macedonian legislation to the legislation of the European Union is at the very beginning. No progress has been made in the access of European Union citizens in terms of public employment and the exercise of public authority. Preparations have been made in this domain to improve access to public employment. The Law on
Foreigners is currently being amended. The country has continued to implement its Resolution on Migration Policy and it has maintained efforts to improve its asylum system and migration management.[10]

Transitional arrangements and EU enlargement

The conditions for entering the Member States for work purposes, studies or longterm residence is regulated by the internal law of the Member State. Western Balkan citizens in compliance with the internal law of the Member States have to be issued work permits if they enter the country for work purposes. Most importantly, nationals should obtain all necessary permits before entering the Member States. The Member States have different policies for legal migration. Therefore, procedures for work permits differ significantly from country

[8] *OJ L 251 03/10/2003, P 0012-0018*
[9] *After the visa liberalization for the citizens of the Republic of Macedonia, the national employment agencies assumed that 25000 citizens, aged between 23 and 40, would leave the country in the second half of January. Most of these people are aged 25-40 and are low qualified workers. The analyst Sam Vaknin believes that in the first 10 years after the visa liberalization between 85000 and 100 000 well educated young workers will permanently leave the Republic of Macedonia and work in a foreign country.*
[10] *https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslavrepublic-of-macedonia-report.pdf*

to country. The third country nationals may be employed in the Member States only if there is no domestic worker for the job position in question. It is important to note that candidate countries which have been granted visa liberalization for their citizens will enjoy the freedom of movement for workers several years after they have entered the European Union. Transitional arrangements were also signed with current Member States that joined the Union in 2004 and 2007. Restrictions on the free movement of workers may apply to workers from EU member countries for a transitional period of **up to 7 years** after they join the EU. Individual governments of countries which are already part of the EU can decide themselves whether they want to apply restrictions to workers from these countries, and what kind of restrictions they would be. During the EU enlargement on 1 May 2004, 12 out of 15 old Member States used transitional arrangements for freedom of movement of workers for new Member States. Part of the new Member States took reciprocal measures for the European citizens from the old Member States in order to protect national labor market. Transitional arrangements signed between old and new Member States are part of the Accession treaty with the Czech Republic, Poland, Latvia, Slovakia, Estonia, Lithuania, Slovenia and Hungary.[11] These arrangements are complex but similar to the arrangements concluded when Spain and Portugal joined the Union. According to statistical data only 102 000 citizens from Greece left the country after EU membership during the transitional period for free movement of workers until 1987. In average 7700 Portuguese citizens migrate to other Member States during the year while Spanish migration was lower during the transitional period.[12]New Member States that entered the Union in 2004 cannot enforce more restrictive measures than the ones already introduced with Accession treaty signed on 16 May 2003 (standstill clause). The difference is that the workers from new Member States after EU accession have the right to have their already acquired qualifications recognized, as well coordination of social insurance schemes. The workers from new Member States must obtain a work permit issued by the National Employment Agency. Workers from new Member States have the advantage over third country workers when applying for a job. The negotiation process with new Member States regarding Chapter for free movement of workers with new Member States lasted for a year with Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia, and two years with the other countries. Nevertheless, after entering the Union transitional arrangements for freedom of movement of workers were set for up to seven years. Consequently, the fear of big migratory flows from the new countries was unreal and controlled by each Member State individually according to the needs of the respective internal labor market. Regular inflows of both skilled and unskilled labor are critical to addressing shortages in the UK labor market where EU citizens have played a key role over recent decades in fulfilling these needs, and contributing equally to the UK workforce, as well as for cultural diversity of the British society. While EU citizens often take up skilled positions, they have been particularly important in the unskilled labor market.[13]Spain feared that by opening regional funds for these states the complete program for undeveloped regions would not be fully realized. Thus Spain, Greece and Portugal agreed on transitional arrangements expecting that membership of new Member States would not decrease the financial support from the Union.

During the transitional period Germany and Austria retained the system of work permit issuance, while Spain, Portugal and Greece introduced a system of quotas for workers from new Member States. Great Britain, Ireland and Sweden were the only countries to completely open the national labor law. The increased mobility of the labor market in EU 27 resulted in a 0.11% increase in the GDP in the short-term and 0.2% on a long-term basis for the period between 2004 and 2007. Double benefits from future migration in the EU are expected by 2020.

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[11] *Treaty concerning the accession of the Republic of Bulgaria and Romania to the EU, Act of Accession, Annex VI, Chapter 1 for Bulgaria and Romania, signed in Luxembourg on 25 April 2005. Treaty of Accession of the Czech Republic, Estonia, Cyprus, Malta, Poland, Slovenia and Slovakia, Act of Accession, Part Four,*
Temporary Provisions, Title 1: Transitional Measures, signed in Athens on 16 April 2003

[12] *EU Enlargement-Bulgaria and Romania, migration implications for the UK, an ippr FactFile, April 2006, Institute for Public Policy Research,www.ippr.org, April 2006, p. 8*

[13] *Brexit and immigration: prioritizing the rights of all workers, Zoe Gardner and Luke Cooper, available https://www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf* [15] *European Integration Consortium, Labor mobility within the EU in the context of enlargement and the functioning of the transitional arrangement, p.4, available at*
http://www.academia.edu/1548459/Labour_mobility_within_the_EU_in_the_context_of_enlargement_and_the_functioning_of_the_transitional_arrangements

The realization of the freedom of movement of workers means gaining more benefits rather than prolonging the transitional arrangements of freedom of movement of workers for new Member States.[15]

Taking into consideration statistical data from previous EU enlargement and migratory flows from potential new EU Member States, Western Balkan countries are not posing a threat to their stability. This is due to the transitional arrangements for freedom of movement of workers regulated between the Member States and the new candidate countries. Therefore, Member States could prolong the movement of new member states workers for a period of about seven years from the day of enlargement.

Conclusion

Freedom of movement is one of the four freedoms of the European Union Internal Market. Full realization of the freedom of movement of workers is important for the improvement of working and living conditions and for strengthening the economies of the EU Member States. While freedom of movement of EU workers is regulated with primary, secondary and the case law of the European Court of Justice, the freedom of movement of third country workers still depends on national laws. Formulating a common immigration policy is a top priority of the European Union. Member States have emphasized the need for working force from third countries for realization of their economic goals. Economic labor migration has indeed become one of the considerations for achieving the goals set in the Lisbon strategy for the EU to become the most competitive and dynamic knowledge-based economy. Turkey and the Republic of Macedonia have signed the Association Agreement, thus regulating freedom of movement of workers into the European Union and vice versa. The decision of the Union to enlarge in the future would depend on the fulfillment of all membership criteria by the candidate countries. Freedom of movement of third country workers cannot impact the stability of the European Union since it is expected that transitional agreements would be signed with the country to eliminate the enormous number of migrant workers. The Member States are free to decide when to open the labor market during the transitional period within the time line period.

Over the past few years, the European Union has strategically distanced itself from the possibility of mentoring Turkey through the membership process. While these actions indicate that membership is not currently a viable option, future events could rapidly change the possibility of Turkish EU membership. If the situation should shift in a manner radical enough to allow for Turkey to join the European Union, immigration flows from Turkey to other EU countries would likely return to those of guest-worker program era in the 1960s. Currently, most of the Turkish workers live and work in Germany and regarding the Association agreement signed with the EU they enjoy certain rights stipulated in the paper. The Republic of Macedonia has also been facing internal political problems over the last two years, migrant crisis, the name issue with the neighboring country Greece, media rights problems, and corruption problems. This has also distanced the Republic of Macedonia from the EU and NATO Membership. Macedonian workers immigrate into the Member States of European Union due to possessing a double citizenship from the Republic of Bulgaria or through the work permit process.

Even after joining the EU it is possible that transitional arrangement would be signed with current Member States for movement of new Member States workers from the Western Balkan countries or from Turkey. Thus, migratory flows are controlled by the EU and by the Member States' internal policies for opening the labor market. The migratory flows of third country workers are controlled and could not be a treat to EU stability and Enlargement policies.

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5 *EU Enlargement-Bulgaria and Romania, migration implications for the UK, an ippr FactFile, Institute for Public Policy Research,www.ippr.org, April 2006, p. 8*

6 *https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417the-former-yugoslav-republic-of-macedonia-report.pdf*