



DANISH “NO” FOR SCHENGEN AGREEMENT - BEGINNING OF THE DESINTEGRATION OF THE EUROPEAN UNION?

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Abstract:

Has the European Union forgotten its internal borders? This question is often asked after Denmark introduced its terrestrial and water border crossings control with Germany and Sweden and after France sent immigrants from North African countries back to Italy.

The aim of this paper is to explain that the freedom of movement of the citizens is one of the main achievements of the Union, and it must be protected. If certain members of the Union try through the introduction of border control to make control to the massive entries into their countries, it may occur European Union to lose the character of the community where the “visas”, “asylum”, “immigration”, and other policies connected to the freedom of movement for the persons as a part of the third pillar that is called cooperation in the region of the justice and internal affairs.

Key words:

European Union,
internal borders,
border control,
freedom of movement.

INTRODUCTION

The creation of united Europe, without doubt, is one of the greatest political processes of today. In the years immediately after the Second World War, before the ruined and economically exhausted Europe, the fateful question was set: What is next? Realizing all the nonsense of the mutual wars of nationalism and religious intolerance, the leaders of the western European nations have chosen wisely the only real path – to build a common future.

The political borders, as a result of a certain ethnic and historical development, could not be deleted for a long time. However, the commitment of a part

of those countries to overcome themselves and to be a lesser obstacle for the exchange of ideas, people and goods and to become a condition for peace projects slowly started to develop.

France, Germany, Belgium, the Netherlands and Luxembourg are the five European countries that in 1985 in the small town in Luxembourg signed the agreement named after the place of signing - Schengen (Den Boer, 1997). The purpose of the agreement was to facilitate the communication of the population of these neighboring countries that could pass from one state to another without showing any document on the border (passport, identity card) to achieve harmonization and the abolition of the borders between the Member States (Single European Act, 1986).



In the beginning the Schengen Agreement had no points of connection with the European Union, but over the time the Member States of the Union joined the agreement on visa liberalization that exempts only Great Britain and Ireland which have separate agreements in the part of the visa regime on communication (Anderson, 2000).

European Council, the countries which are not part of the Schengen area, puts them on the white or the black Schengen list and depending on where the person comes to the borders of the Union receives such treatment (Revising EU Border Control Rules, 2005). Since 2009, the Republic of Macedonia has been a part of the white Schengen list which means that its citizens have no need of visas for entry into the EU countries for stays of up to 3 months over a period of 6 months.

EXTERNAL BORDERS OF THE EUROPEAN UNION

Due to the limited competences of the EU in the promotion of the concept of European citizenship and its central request – free movement of persons, the Member States have chosen the path of interstate bargaining, which is included in the EU law. Schengen Agreements of 1985 and 1990 have the character of classical interstate conventions concluded between the Member States, with the exception of Great Britain and Ireland and plus Iceland and Norway which are not members of the EU. The agreements are in force since 1995 (Burian, 1999).

The main objective of the Schengen Agreement is the establishment of a free movement zone on the territory of all Member States, without internal borders and internal control. The temporary suspension of such a regime can be justified only if it is required by the interests of the public order or national security. The freedom of movement within the EU, without internal borders and control is followed by the so-called compensatory measures which consist of a common visa regime, intensification of police, customs and judicial cooperation and joint activities in the prevention of transnational forms of crime, especially terrorism and organized crime (Apap *et al.*, 2001). Schengen Convention defines the harmonized forms of external border control, specified with a general guideline for external borders that contains operating instructions for entering the EU territory and detailed vetting procedures.

POLITICS CONCERNING THE LEGAL STATUS OF FOREIGNERS

With the Treaty of Amsterdam it is determined that the EU is based on the principles of liberty, democracy and respect for fundamental human rights and freedoms guaranteed by the ECHR and constitutional traditions common for the states – members as general principles of the *acquis* (The schengen *acquis* as referred to in Article 1(2) of Council Decision 1999/435/EC, 1999). Despite this general policy, in respect of fundamental rights and the rights of the EU citizens, special attention deserves the EU policy regarding the rights of the EU citizens of the third countries on any ground (immigrants, foreign workers, students, *etc.*), being located on the territory of any Member State. It was already stated that it is not an acceptable conception on a difference, discrimination, status of foreigners and that is the reason why the fundamental freedoms and rights should be respected and protected equally for everyone. According to the Treaty of Amsterdam these persons enjoy all the fundamental rights (personal freedom, property rights, *etc.*) but not political rights (electoral rights, performing public functions, *etc.*) which are reserved for the local citizens. However, with the EU Treaty (Maastricht to Nice), any special status for foreigners is not provided versus the calculated rights of the EU citizens for being the citizens of the Member States.

The need to establish a policy of entry, residence and employment of foreigners is becoming more popular because the immigration wave, having been intense especially since the beginning of the nineties after the collapse of the former socialist countries and economic migration caused by the huge unemployment and poverty in countries in transition (Weiler, 1991).

Having spent several stages while the EU legislation was established regarding the treatment of these persons, the policy of visas towards the citizens of the third countries has received special significance. It has gained importance and having been lifted on a common level because the EU external borders remain the only control line for entry and stay of the foreigners.

ASYLUM POLICY

Asylum is an institute of international law with which application is to provide protection for persons



emigrated to another state. The person-refugee cannot be returned to the country from which he/she has escaped because of fear of political persecution or prosecution for racial, religious, ethnic, social or political affiliation. The state decides whether a person will be approved the asylum status in accordance with the Geneva Convention on refugees adopted in 1951. In recent times, the mass reappearance of migrants, due to the economical problems of the countries in transition, has imposed the need to define a common EU asylum policy.

In the Treaty of Maastricht it is a part of the third pillar for cooperation of the Member States in the sphere of justice and home affairs (Justice and Home Affairs, 2011). The right of asylum is guaranteed by the Charter of Fundamental Rights of EU and the Treaty of Amsterdam, a matter for asylum is common and moves to the common EU policy in the sphere of the first pillar (European Community). It requires the creation of mutual funds to help refugees, harmonization of national legislation in this area and so on, which includes assistance to countries which have received the refugees and to facilitate the repatriation and reintegration if the asylum is required because of military events in the home country (Chryssochoou, 2001).

IMMIGRATION POLICY

An immigrant is considered a citizen of any state which is not a member of the EU or a person without nationality who wants to settle on the territory of another member state because of the search for a job or exercise of other aims, including the connection to his family. Free movement of persons, throughout the territory of all the Member States without internal borders, raises the issue of immigration at the European level and requires the establishment of foundations for the common policy on immigration. With the Treaty of Amsterdam this is a common policy and becomes an integral part of the first pillar of the EU (visa, asylum, immigration and other policies related to the freedom of movement for persons) implicating adoption of measures for coordination of the legislative and other activities of the Member States and mutual activities of the EU bodies (Hobbing, 2005). The only policy on immigration began to be transformed after the Summit in Tampere in 1999, when the emphasis was on preventing the illegal immigration (Learning Space, 2011).

However, the assessment remains despite the political objectives of the EU which has not developed appropriate instruments for consistent immigration policy causing the problems that are worked out below.

NORTH AFRICA- REASON FOR REACTION OF FRANCE

"Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect." Article 18 of the EC Treaty.

This is only one of the articles that regulate the right of free movement and residence of the citizens of the European Union which is subject of elaboration in this paper, *i.e.* the fact that a Member State denies and declares illegitimate the residence permit which was given by another Member State to citizens of the third countries (Caparini and Marenin, 2006). Although, *de facto* the Article regulates the residence and the movement of the Union citizens, with the entry permission itself, it means you have the same rights as all other citizens who respect the laws of the country in which they are located and the *acquis communautaire* of the EU (Regulation (EC) No 562/2006 of the European Parliament and of the Council, 2006).

The first reactions around the movement on the borders came from France due to the influx of immigrants from the North -African countries during the spring of 2011, and introducing controls on the border with Italy which showed that the internal borders of the Union were not forgotten but only waited for a moment when they would appear to the scene again. Within a short period more than 700 people were arrested who had passed the border between these two countries with the treatment of illegality, regardless of previously received permission to enter Italy and within the European Union itself.

Cecilia Malmstrom, a head of the Department of Interior Affairs of the Union, complained to the French side on the ground that she did not have the right to monitor the border crossings unless it was threatening the public safety. According to her, the given case was not within this framework and France violated the recommendations of the Schengen Agreement which ensured the freedom of movement of the citizens within the Member States.



Figure 1: EU visa policy

The active discussion of the Ministers of Interior of Italy and France, Roberto Maroni and Cloud Zeno shows that each of them defends his own position. The Italian Minister claimed that France was hostile and France is on the view-point that, in accordance with the so-called the Chambéry Agreement, it has the right to deport anyone back to Italy.

For real, the problem is in the lack of a single immigration policy of the European Union and the people without documents are treated differently depending on where they are arrested (Duff, 1997). The consequences are often born by the workers without licenses in the field of structural engineering in the French cities, mostly because they use the cheap railway transport, which is now intensively controlled. The persons from Tunisia, who are not able to stay in France at the moment, react that it is a question of the former French colony and ask the authorities in Paris also to recall their recent relations, in their mutual past.

The EU Ministers have also faced to the similar problem with the opening of the Schengen Area to the Balkans and South East - Europe countries. The Republic of Macedonia together with Kosovo, Serbia, Albania was one of the warned that may face

to serious problems in the further regulation of its status in the Union if it does not stop the wave of migrants under the veil of an application for asylum in the Western European countries trying to gain economic benefit.

DISRUPTION OF THE FUNDAMENTAL BENEFITS OF THE EU

The initial reaction on a ministerial level is that most of the countries (15 of 22 states) agree that they should return the passport control. The next step is to return the immigrants in the countries where they came from and the more detailed plans must be adopted with the revision which, according to the rules of the EU, has to be voted in the European Parliament.

The arguments for these opinions among the other things are in the process of adoption of the Maastricht Treaty (1992) which spent more controversies and revisions (Corbett, 1993). One of them was asked by Denmark where on the first referendum the signing of the agreement was not accepted and the second passed by a narrow majority



after the supply of several concessions by the Danish Government. They are now summoned, when introducing measures for protection of the safety of its own population, from crime and terrorism.

The position of the Minister Sandor Pinter of Hungary is that the implementation of the passport control will mean regression of the benefits of the Schengen Agreement. Also, it may cause a range of reactions and other types of freedoms, if the freedom of movement is limited for the EU citizens as one of the fundamental benefits of the Union. According to him, some other modality must be found that would help to overcome the problem that appeared, but not on the damage of the already acquired rights and benefits of the European citizens.

The summer period is a moment for introducing the border control entry in Denmark by its neighbors which is seen as an inappropriate act of the government to appease the radical right wing under the cover of the explanation that this is to prevent cross-border crime and not to tighten the control of the free passage of passengers within the EU. The Danish Minister for Customs and Taxation Peter Christensen emphasizes that a greater number of the tourists will not notice that there is an increased number of unimpressive present duty officers that would not allow queues at the entrance in Denmark.

However, this is only a result of the significantly improved video-control at the borders of Germany and Sweden in order to improve the detection of the smugglers of weapons, drugs and people, and according to the authorities in Denmark, it is a serious problem not only in this country but also in the whole European Union.

The circumstances are going to support the activities undertaken by Denmark and confirming the decisions of the EU summit in June by which the country was assured that the EU will not initiate action against it for violation of the European laws and provisions of the Schengen Agreement. At the same time, the European Council gave green light for planning and introducing new border controls aiming to control the illegal migrations (Council decision, 2004).

To a certain degree, the politicians, considering the situation of their countries, approve such measures which modify the Schengen Agreement. However, the citizens of the neighboring countries of Denmark react predictably. This act is considered

to be negative in terms of political reputation of the country primarily among the ordinary people from the neighboring countries.

The supporters of the Danish move direct bigger attention to the rights of the sovereign countries to prevent the crossing of the borders of the undesirable elements in a legal way. "A sovereign country is obligated to protect the interests of its own people", says Daniel Van der Steppe, M.P. from the Netherlands. His opinion, that the entry of new countries in the Schengen Area is in favor of the import of crime from the poor to the rich countries in the EU, is accepted by other members in this highest legislative body of the Union. The M.P. from Great Britain, William Dartmouth goes even further claiming that: "For the national states it is the best to decide themselves for their fate. The leadership of the Union has shown that is not able to do that." With this statement he predicts the end of the European idea, towards which the countries of the Western Balkans, including the Republic of Macedonia, are aiming.

The defenders of Schengen and the European idea criticize the decision according to which the countries within the Schengen Area are allowed to reintroduce the border controls according to their aspiration. For them it is not an excuse to decrease the safety. On the contrary, the cooperation of the police in the EU member states can only contribute to the improvement of the security in the countries (Van Dijk and Van Hoff, 1998). Manfred Weber, from the German conservative Christian Social Union (CSU) claims that the security in the Bavarian-Czech border area, where he lives, has increased after the abolition of the borders because the cooperation between the German and the Czech police is much better now than before.

Cornelia Ernst from the German Left considers that the central European institutions which did not react strong enough, in the case of the re-introduction of the borders by Denmark, have failed: "When Denmark sets permanent border controls for Sweden and Germany, then it is a breach of the agreement and I expect from the European Commission to treat it like that".

The mutual resolution which was adopted on all these controversial discussions is reduced to the statement for "deeply regrets for the re-introduction of the limits". Only with one sentence France is reproached – the influx of refugees does not justify the abolition of the Schengen Agreement.



If you carefully analyze the original formulation of the Pillar of Justice and Home Affairs (known as the third pillar of the EU), policies for asylum, migration and citizens from the third countries are accepted according to their solution in the Treaty of Amsterdam (1997) and as such are integrated in the EC Treaty. It also includes the problem considering the questions of international crime, various forms of judicial, customs and police cooperation, including the Office of Europol for exchange of information.

CONCLUSION

The freedom of movement of people and goods, the common European market and the single European currency are the most important benefits of the European Union during its 61 - year existence. The fact that two of its members began the changes which are somehow isolated appearances and without support from other countries, suggests that there are changes in the awareness of united Europe which Robert Schuman had in mind, the initiator of the European idea for unification. The European Commission and the European Parliament are the bodies with the power to take action for changing the situation. So far their efforts in that area have been limited.

Being aware of the precedent, France and Denmark explained the procedure that carried in anxiety into the European family, justifying it with acts that had validity (France with the agreement signed by Italy and Denmark with argument that it is a question of protection of their own territory from criminal and terrorist actions). The very fact is that it seeks support for what has been done, meaning that what happens is outside the practices of the European Union which stands for unity in every way.

I would not like to join the skeptics who, since the unification of the European Union, have claimed that it is an artificial creation which will eventually collapse after the example of the major federations in the world (USSR, Yugoslavia). However, I believe that, on the next summit of the EU Parliament, a solution will be found and that it will be focused primarily on the strengthening of the external borders of the European Union rather than the establishment of the internal border control, no matter how much invisible it will be.

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DANSKO „NE” ZA DOGOVOR IZ ŠENGENA - POČETAK DEZINTEGRACIJE EVROPSKE UNIJE?

Rezime:

Da li je Evropska unija zaboravila na svoje unutrašnje granice? Ovo pitanje postavlja se sve češće otkada je Danska uvela carinsku kontrolu na svim svojim pograničnim prelazima prema Nemačkoj i Švedskoj i otkad je Francuska poslala natrag u Italiju imigrante iz severnoafričkih zemalja.

Cilj ovog rada je da objasni da je sloboda kretanja ljudi jedno od ključnih dostignuća Unije i da ono mora da bude zaštićeno. Ako neka od članice Unije pokuša da uvođenjem pogranične kontrole vrši kontrolu masovnog ulaza u tu zemlju može se desiti da Evropska unija izgubi svoj karakter zajednice.

Ključne reči:

Evropska unija,
unutrašnje granice,
carinska kontrola,
sloboda kretanja.

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