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MECHANISMS FOR PROTECTING MIGRANTS' RIGHTS IN THE MODERN WORLD

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Abstract

In the modern world, the protection of migrants' rights remains one of the most important challenges, which is due to globalisation, conflicts, and increasing economic inequality. Migrants often face discrimination, exploitation, and social exclusion, which is why the existence of effective legal and institutional mechanisms is necessary. Migrants often find themselves in vulnerable situations due to their legal status, language barriers, inadequate social protection, and limited access to justice. In many cases, they face discrimination, labour exploitation, risks of human trafficking, and limited access to healthcare, education, and social services. These challenges highlight the need to develop effective mechanisms to protect migrants' rights at both the international and national levels. At the international level, the protection of migrants' rights is ensured by documents such as the Universal Declaration of Human Rights and the Convention on the Rights of Migrant Workers. International organisations and regional structures that carry out monitoring and recommendations also play an important role. At the national level, states create legislation and policies aimed at the integration and protection of migrants' rights. Nevertheless, gaps still exist in practice, which require coordinated international cooperation and a human rights-oriented approach.

Keywords*: Migration, Human Rights, Discrimination, Social Protection, State Policy*

Introduction

In today's globalised environment, international migration has become an integral part of global socioeconomic and political processes. The growth of transnational population mobility is linked to economic disparities between countries, armed conflicts, political instability, climate change, and people's desire for higher standards of living. According to the International Organisation for Migration, the number of international migrants worldwide is constantly increasing, reinforcing the need to develop effective mechanisms to protect their rights and legitimate interests.

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Despite the recognition of migrants as subjects of international human rights, this category of individuals often finds itself in vulnerable situations. Migrants may face discrimination, restrictions on access to labour and social rights, exploitation in the labour market, and legal uncertainty in host countries. Under these circumstances, the development of a comprehensive system of international and national mechanisms to protect the rights of migrants is particularly important. International legal instruments and institutions aimed at ensuring respect for fundamental human rights and freedoms play a vital role in this system. One of the key documents in this area is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the work of international organisations, including the United Nations and the International Organisation for Migration, which develop international standards and promote their implementation.

The relevance of this study stems from the fact that, despite the existence of a well-developed international regulatory framework, the issue of effectively protecting migrants' rights remains one of the most complex in contemporary international law and politics. Many states face the need to find a balance between regulating migration flows, ensuring national security, and upholding universal human rights.

The purpose of this article is to analyse the main mechanisms for protecting migrants' rights in the modern world and to identify key challenges in their implementation at the international and national levels. Particular attention is paid to the role of international organisations, international legal instruments, and states in ensuring the effective protection of migrants' rights.

The Rights of Detained Irregular Migrants

The rule of law is a complex concept that has evolved historically and takes different forms in different democratic traditions. In general, it refers to a system in which all members of society, including all structures of the state and its agents, conduct their affairs in strict compliance with the law, and the judiciary acts as a guarantor of such protection. The rule of law is based on the principle of legality and the independence of the judiciary. Currently, the requirements of the rule of law in relation to deprivation of liberty are enshrined in constitutional texts and legislation around the world, and are applied and interpreted by the judiciary in different legal cultures and jurisdictions (European Law Institute, 2017).

The rule of law is one of the values on which the European Union is founded and, consequently, also one of the guiding principles of the EU's external action. Article 2 of the Treaty on European Union states: “The Union is founded on the values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are shared by mem-

ber states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. To ensure effective respect for the values on which the European Union is founded, the Treaty on European Union (TEU) also establishes a sanctions mechanism (in Article 7) aimed at suspending certain rights of Member States in the event of "a serious breach of those values by a Member State" (Article 2) (EU, 2012).

Therefore, EU action in the field of asylum and migration - both within the EU Member States and in agreements with third countries must respect, promote and encourage the rule of law (Mermanishvili, 2021).

When taking any decision or order on the administrative detention of asylum seekers or irregular migrants, Member States implement not only EU law, but also, most often, Article 5 of the European Convention on Human Rights (ECHR) (possibly in conjunction with Article 3 of the ECHR) and national constitutional and/or statutory provisions. The interaction between the three main systems of protection under EU law, the European Convention on Human Rights and national law can lead to very complex legal conditions that must be taken into account by the judge in each specific case. The fifth subsection describes this interaction with general approaches used by the relevant courts, which consider this interaction in practice. In the case of detention of asylum seekers, the link between EU law and Article 31 of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (hereinafter referred to as the Geneva Convention) must be taken into account (UN, 2011).

Article 78 of the Treaty on the Functioning of the European Union (TFEU) defines the relationship between EU law and the Geneva Convention. This article provides that the common policy on asylum, subsidiary protection and temporary protection "shall be in conformity with the Geneva Convention and other relevant treaties". Although the Court has referred to this provision, it has not yet specified which "other relevant treaties" it refers to (UN, 2012).

Statelessness, by its very nature, severely limits access to identity and travel documents that citizens normally possess. Stateless persons often have no legal residence in any country (Pirtskhalashvili & Mirianashvili, 2018).

Hence, the absence of documents or the necessary immigration permits cannot be used as a general justification for the detention of such persons. Article 9 of the International Covenant on Civil and Political Rights ("ICCPR"), which guarantees the right to liberty and security of a person, prohibits unlawful and arbitrary detention (UN, 1966).

For detention to be lawful, it must be regulated by domestic law, preferably with maximum limits, and subject to periodic and judicial review. For detention to be non-arbitrary, each case must be reasonable, proportionate and non-discriminatory in all circumstances. Indefinite and mandatory forms of detention are inherently arbitrary. EU Asylum Procedures Directive 2005/85/EC, Article 18(1): "Member States shall not hold a person

in detention for the sole reason that he or she is an asylum seeker"(Fordham et al., 2013).

If detained pending determination of statelessness status, they should not be held with convicted criminals or those awaiting trial. Furthermore, detainees must have access to legal representation during the detention review process, including free consultations for those who cannot afford it (UN, 2014).

The definition of immigration detention contrasts with "criminal detention." The merging of these two separate areas of law has led to confusion regarding the nature of immigration detention. In recent decades, we have clearly seen a trend towards the criminalisation of migration and migrants themselves, as the term "criminal migration" has emerged in the United States. Migration cuts across both criminal and administrative national laws, depending on local circumstances. In some countries, illegal entry is criminalised, leading to prosecution and imprisonment. A recent report by the European Union Agency for Fundamental Rights (FRA) found that all countries except Portugal, Spain and Malta punish illegal entry with fines or even imprisonment. As for illegal presence on the territory of a country, it is punishable in all EU member states except France, Portugal and Malta (Bloomfield et al., 2015).

Health Risks and Vulnerabilities of Migrants

The relationship between migration and health is dynamic and complex. Migration can lead to greater exposure to health risks, as is the case for migrant workers in precarious employment with limited access to affordable health care. Migrant health can be defined as differences in health status between migrants and the population in both countries of origin and destination, and in different migration contexts, such as labour migration, international and internal displacement, or irregular migration. Whether individual migrants' health improves or declines depends in part on the interaction of multiple factors that influence their health before, during, and after their migration journey. Social determinants of health include access to safe transportation, quality housing, and healthcare, as well as the response of government systems to migration and health issues. Developing migrant-friendly health services and monitoring migrant health through the Migration and Health in All Strategies (MHAP) approach ensures that migrants' health needs are met. Insufficient, inadequate or discriminatory systemic immigration and health services can lead to several negative health outcomes for migrants and their communities (members of the communities with whom they interact) (United Nations, 2008).

The field of migration and health explores patterns of health interdependence that occur between migrants and the host community and between different groups of migrants, including in situations where the host population struggles to meet its own needs for mental, social, and physical well-being. In the case of infectious diseases, delaying

treatment or attempting to continue treatment for chronic infectious diseases, such as tuberculosis or HIV/AIDS, can have negative consequences for the population, as the potential for further transmission may increase. Refugees, asylum seekers and irregular migrants are more vulnerable to infectious diseases than the host population (IOM, 2020).

The international human rights movement gained momentum when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948 (UN, 1948). It aims at protecting and promoting respect for universal human rights and at ensuring the effective recognition and observance of the rights set forth therein (UN, 1994). Designed as a "common standard of achievement for all peoples and nations," the Declaration, for the first time in human history, outlines the fundamental civil, political, economic, social and cultural rights to which all human beings are entitled. Over time, it has become widely accepted as a fundamental norm of human rights that everyone must respect and uphold. The Universal Declaration of Human Rights (UDHR), together with the International Covenant on Civil and Political Rights and its two Optional Protocols, as well as the International Covenant on Economic, Social and Cultural Rights, constitute the so-called international bill of human rights (UN, 1948). The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) establish civil, political, economic, social and cultural rights.

Under international human rights law, ratification of UN conventions creates three types of obligations for states: obligations to respect, protect, and fulfil human rights. Concerning the right to health, the Committee on Economic, Social and Cultural Rights (CESCR) has established in its general comment (fourteenth comment), paragraphs 30-33, that States have an obligation to ensure that people's health is inviolable. The obligation to protect obliges States to take measures to prevent violations of the guarantees set out in article 12; and the obligation to fulfil requires States to take appropriate measures to ensure the full realisation of the right to health. States must therefore take specific measures to fulfil and protect the right to health, as well as the basic conditions of health. They also have an obligation to refrain from "interfering directly or indirectly with the enjoyment of the right to health" (PICUM, 2022).

The Committee on Economic, Social and Cultural Rights (CESCR) provides a number of examples of the obligations of states to refrain from actions that would impede the enjoyment of the right to health, known as negative rights. These include the obligation to refrain from denying or restricting equal access to all, including undocumented migrants, (but are not limited to):

- Preventive, curative and palliative healthcare services;
- Refraining from implementing discriminatory practices as a state policy;
- Refrain from imposing discriminatory practices related to women's health status.

Similarly, the Committee on the Elimination of Racial Discrimination (CERD), in its thirtieth general comment, reminded States parties to respect the right to health of

non-citizens and to refrain from denying or restricting their access to preventive, curative and palliative health services (UN, 2000).

Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) states that states are obliged "not to expel, return or extradite a person to another State if there is a risk that he or she would be in danger of being tortured;" and in its fourth general chapter, it states that victims of torture or other inhuman or degrading treatment or punishment should not be deported to another country where their medical treatment and services are not guaranteed.

Therefore, some provisions of the treaties are subject to "progressive realisation," including the right to health. According to the Office of the United Nations High Commissioner for Human Rights, progressive realisation "is the obligation to take appropriate measures to achieve the full realisation of economic, social and cultural rights to the maximum of their available resources" (UN, 2008).

Conclusion

Thus, we can claim that international migration is one of the most significant phenomena in today's globalising world. Economic inequality between states, political instability, armed conflicts, environmental problems, and people's desire for higher living standards continue to drive the growth of migration flows. Therefore, protecting the rights of migrants has become a crucial task for the international community. According to the International Organisation for Migration, the number of international migrants worldwide is steadily increasing, creating new social, legal, and political challenges for both countries of origin and host countries.

Migrants often find themselves in vulnerable situations due to their legal status, language barriers, inadequate social protection, and limited access to justice. In many cases, they face discrimination, labour exploitation, risks of human trafficking, and limited access to healthcare, education, and social services. These challenges highlight the need to develop effective mechanisms to protect migrants' rights at both the international and national levels.

This article examines the main mechanisms for protecting migrants' rights in the modern world. Particular attention is paid to international legal instruments and institutional mechanisms aimed at ensuring respect for the rights and freedoms of migrants. Key international documents are analysed, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the activities of international organisations, particularly the United Nations, which play a key role in shaping international human rights standards.

Discrimination and ill-treatment of migrants are contrary to the framework of human rights instruments, in particular the Universal Declaration of Human Rights, adopted on 10

December 1948 by the United Nations General Assembly in Paris, General Assembly Resolution 217, which grants everyone the right to seek asylum in another country for reasons of particular concern; the 1951 Refugee Convention and its 1967 Protocol, which are considered fundamental legal instruments as they define the rights of migrants and asylum-seekers and set international standards of protection. The principle of non-discrimination in human rights is enshrined in specific framework instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICCPR). International Covenant (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Convention on the Protection of the Rights of All Migrants and Members of Their Families (ICRMW).

The general principle that can be argued is that human rights belong to all people by virtue of their humanity; if rights differ because of a person's immigration or status, the difference must be reasonably justified by law, serve a legitimate aim and be proportionate to achieving that aim. The principle of non-discrimination must be at the heart of all measures taken to combat violence against migrants. In practice, this principle means that receiving States, their legislative and public institutions, politicians and the receiving community must respect and protect the rights of all migrants, regardless of race, colour, sex, language, religion, political or other opinion. Since all people should be equal and have equal rights and should enjoy all fundamental human rights. States and the parties within them must not only refrain from discrimination, but must also take positive steps to combat all forms of discrimination by both private and public actors.

The article concludes that, despite the existence of a well-developed international legal framework, many challenges remain in the practical implementation of mechanisms to protect the rights of migrants. Strengthening international cooperation, improving national legislation, and developing institutional mechanisms are essential for effectively protecting the rights and dignity of migrants in the modern world.

In this regard, it is important to note that when social, cultural, religious and ideological differences are ignored in attempts to integrate migrants into society, this can have very difficult consequences, leading to conflict between migrants and the host country and its society. Moreover, racist, discriminatory or xenophobic attitudes and the isolation of migrants also violate their fundamental rights, leading to the radicalisation of migrants.

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