

# The Immigrant's Legal Status in International Law

# Return Migration: a Pattern of Policy Transfer or a Domestic Approach?

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Abstract: Migration phenomenon is a complex, cross-country, emerging issues and more often the decision-makers are challenged in terms of public policies. Therefore, in their attempt to find better or the best solutions to public policies problems, including migration, policy makers look to their neighbours for policy transfer. The context of international cooperation on emerging issues fosters the spread of ideas, models and practices of policies, and the last decades emphasised that policies fostering and promoting return and integration have been a common subject of governments. Still, the evolution of return has been impacted by the COVID-19 pandemic and travel restrictions come into force in all countries. Therefore the attention of this paper is not on the effects of COVID-19 on migration policies, but on migration policies measures, especially those targeting return migration in "common" time. In this sense, the analysis is focus on return migration policies as one side of migration cycle and on the other hand tries to find an answer to "Does these policies follow a pattern of policy transfer?" The main objectives are to identify and study several policies initiatives and to see in what extend they are made based on policy transfer approach. From methodological standpoint, the analysis is conducted in terms of comparative perspective based on deep - document analysis.

Keywords: policy transfer; return migration; migration determinants

## 1. Introduction

In an interrelated world, policy-making become a "networking process" and the migration a fact of life,

therefore an understanding of the key trends in migration policies is essential, and a useful way for that is represented by policy transfer. Traditionally, policy making and public policy have been viewed as a domestic idiosyncrasy, struggled by the domestic factors and actors, but it is obvious that this is not the reality. The policy making and the policy problems are shaped not only by the domestic environment, but also by the international and transnational context. Moreover, economic and social factors as well as political instability and intra-EU mobility support the international migration. Therefore, the goal of the 2030 Agenda for Sustainable Development "to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies" is a step forward to policy coherence on migration.

Moreover, the migration and asylum policy in Europe has been made in cooperation networking, supranational forums and implemented by national and transnational actors, although certain aspects remain a shared competence with the national level. At the time being, the European Migration Policy

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includes policies on legal migration, irregular migration, borders, visa, a Common European Asylum System and the external dimension.

The free movement of persons is one of the four freedoms of European Union, so return migration, particularly the decisions of the citizens of one EU Member States to go back to his origin country may have a profound impact on both home and host countries in areas such as the economy (e.g. trade, entrepreneurship, development), culture (language, habits, styles, attitudes) and politics (Anghel & Cosciug, 2016).

Aside from proposals to restrict emigration and increase birth rates, countries are looking to their diaspora communities and make decisions to foster them for coming home. In this sense, public policies and institutional contexts have been created, including strengthening the collaboration with private sector and nongovernmental organisations.

## 2. Policy Transfer: a Tool for Solving Policy Issues

Studying policy process in the light of policy transfer approach is not a novelty, nowadays, on the contrary a lot of literature occurred since the most cited authors (Dolowitz & Marsh) put the bases of this methodology. However, the globalization, interrelations and the digitalization, and even more artificial intelligence made it currently approach for many governments.

For Dolowitz and Marsh (2000) policy transfer is "the process by which knowledge about how policies, administrative arrangements, institutions and ideas in one political setting is used in the development of policies, arrangements, institutions and ideas in another political setting". Under this broad definition, in the context of administrative convergence and policy capacity several veins have been developed, namely policy diffusion, policy convergence, learning-lessons, that in general are so-called "policy transfer studies". The challenges raised for policy process by this approach are substantial and need to be taking into consideration since each country has its own traditions, history, values, capacities, experiences and resources. However, there is now a tendency to focus more on how these different fields can contribute to a better understanding (Hadjiisky et al. 2017; Porto de Oliveira & Pimenta de Faria, 2017).

For many policy fields, it is a fact, policies travel among states, although the study of travelling policy recipes has not been always well embraced by practitioners. On the other hand, research into policy transfer underwent and exponential growth, and scholars from various research fields pay attention to it.

According to (Porto de Oliveira & Pimenta de Faria, 2017) policy transfer perspective "reinforce the idea that it is not sufficient to compare similarities and differences between units, but it is also important to trace the genealogy and trajectory of models and to understand how two (or more) countries are embedded in dynamics of mutual learning, competition and reciprocal influence". Still, because there is a need to be very lucky to transfer a policy *per se*, meaning to find and foreign model entire suitable, the policy transfer need to be viewed in terms of learning, changes in the processes and behaviours of policy makers and policy instruments. Moreover, it is important to keep in mind that policy making is not a linear process and the policy transfer, usually does not take place from one government to another, but on contrary there are complex movements, policy networking which are involved in drawing different directions as well as frameworks for translating.

Looking back, it can be remark that policy transfer found its inspiration into draw lessons perspective according to that states seek for ready responses for policy problems, even in a local or international

neighbours. Nonetheless, not all the time the policy makers search the policies responses, due to into policy transfer continuum can be identified different situations.

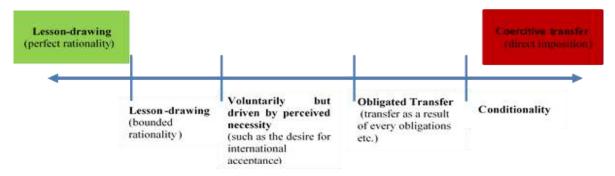


Figure 1. Policy transfer continuum

Source: (Guiraudon, Lahav, 2016)

From the above figure can be remarked that there are to main poles that determine policy makers adopt policies: voluntary, based on inspiration, admiration or imposition based on internal or external constraints, for instance to be accepted into a networking.

Valuable findings in the policy transfer come, also from policy convergence and Europeanization of public policies studies. Convergence studies promote the idea that governments prone to adopt similar responses to policy issues and institutional structures even in different context. Europeanization is also a process that fosters for transfer in a large number of countries and policy fields.

## 3. Return Migration Policies in Eastern European States

One side of migration cycle is the return migration, and here, a look on the effectiveness of policies and programs of reintegration got a special attention because in the past decades the return migration appeared as a critical element of many domestic migration policies.

### 3.1. A Brief on Conceptual Approaches on Return Migration Policies

Based on different links of return migration with various sectorial policies, the term has been characterized as a "catch-all" term. An accepted definition of this phenomenon, is that of United Nations Statistics Division, according to that "returning migrants are persons returning to their country of citizenship after having been international migrants (whether short-term or long-term) in another country and who are intending to stay in their own country for at least a year" (UNSD, 1998). Two restrictive features are set here:

- Country of citizenship instead country of origin;
- Intended durations instead actual durations.

Therefore, the literature searched for more flexible or inclusive definitions. For example, European Migration Network (2011) defines return as "the movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous". On the other hand, the ILO (2018, p. 15) guidelines state that "return international migrant workers are defined as all current residents of the country who were previously international migrant workers in another country

or country. The minimum duration of labour attachment abroad for a person to be considered as a return international migrant worker [is] relatively short, such as 6 months".

Also, it can be found a conceptual framework at return for European level, but here definition takes a form of third-country national-oriented approach. In the light of that, return means "the process of a third-country national going back - whether in voluntary compliance with an obligation to return, or enforced - to: (a) his or her country of origin, or (b) a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or (c) another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted" (Directive 2008/115/EC).

Moreover, the literature (Battistella, 2018; Cassarino, 2014; King, 2000; Dumont & Spielvogel, 2008; Wickramasekara, 2003), emphasised different types of return migration, such as: occasional returns, seasonal returns, return of temporary workers at the end of their work contracts and return of permanent residents who were settled in other countries.

Based on the above conceptual framework and taking into account the policy definition "whatever the government chooses to do or not to do" (Dye, 1984), in this paper the return migration policy is understood as governments decisions and their programmes to facilitate return of their citizens living abroad. Particularly, the focus is on measures fostering and facilitating the regular return migration (voluntary/free return) in the way of independent return based on the free will of the returnee.

In this sense, at first glance, the return migration policies seem to be the public interventions to encourage the return of migrants carried out by the country of origin. Deeply, the migration studies (Şerban & Croitoru, 2018) stated different spaces for placing the interventions:

- the country of destination the place to which the migrants have gone to live and from which they now wish to return;
- the country of origin the place to which the migrants wish to return;
- the international organisations the recommendations and frameworks developed on return.

Still, the studies become even more confused when one speaks in term of migration policies components, because according to certain scholars (de Haas & Vezzoli 2011, Weinar 2014) it encompasses on the one hand the emigration and diaspora and on the other hand emigration, diaspora and return (Østergaard-Nielsen 2003; Lesińska 2013). There is also, a third perspective that considers the return migration policies as an independent dimension of the migration policies of origin countries (Serban & Croitoru, 2018).

A conceptualisation of return migration policies is given by Lesińska (2013, pp. 80–81) who defines them as interventions to promote return and to inform the migrant communities about the opportunities in the origin country (these interventions can include support for employment, offers of training and counselling, economic incentives for entrepreneurial activities, setup up institutional structures).

#### 3.2. Triggers of Return Migration

Broadly, it can be said that people migrate for better economic and social opportunities for themselves and their families, as well as due to lack of access to fundamental human rights or in response to crises. The literature broke this factors into macro, meso and micro factors and stated the following framework for showing the "drivers" of migration.

**Table 1. Drivers of Migration** 

Macro					Meso	Micro
Social	Economic	Demographic	Political	Environment	Obstacles and	Individual
				al	facilitators	characteristics
Seeking	Job	Population	Discrimina	Exposure to	Political/legal	Age, Sex,
education	opportunitie	size/density	tion/persec	hazard	framework	Education,
	S		ution			Wealth
Family	Income/wag	Population	Governanc	Food/water	Cost of moving	Marital Status,
obligation	e/wellbeing	structure	e/freedom	security		Preferences
S						
	Producer/co	Disease	Conflict/in	Energy	Social networks	Ethnicity,
	nsumer	prevalence	security	security		Religion,
	prices					Language
			Policy	Land	Diasporic links	
			incentives	productivity		
			Direct		Recruitment	
			coercion		agencies	
					Technology	
DECISION	N TO					
MIGRATI	E/STAY					

Source: based on Foresight: Migration and Global Environmental Change (2011) and Castelli (2018)

In this sense, it can be noted that migrants return or not return for many voluntary or involuntary reasons. The specialised studies emphasised that decision for return is complex and depends by a variety of factors from destination and/or origin country, individual and social factors and of course, policy interventions. Therefore, in order to identify them and for a better understanding, scholars drawn different models. One of them is the push-pull model which is rooted into functionalist social theory. According to this theory, people are expected to move from low-income to high-income areas, and similar to neoclassical model it assumes that people move to maximise their utility (wellbeing). Because these models fail to give a clear understanding of return migration, a part of literature (Carling 2002; de Haas 2003) provides a framework based on capabilities and aspirations to move within a given set of geographical opportunity structures.

### 3.3. Case Studies on Return Migration Policies

The analysis is conducted on Romania and Bulgaria, two countries which share certain similarities that allow a comparative approach in policy terms. Although, both are EU Member States, the EU migration policy is an area of shared competence, so Member States have a certain discretion. According to the 2020 (2021) Annual Report on Intra-EU Labour Mobility, in 2019 over 50% of all EU movers of working age came from Romania, Poland, Italy, Portugal and Bulgaria, meaning 6.9 million out of 11.9 million. Also, it is important to remark that looking to outflows from high-skilled movers perspective, in term of proportion of high-skilled citizens still living in their country of origin, the proportion is highest in Romania (22%), Bulgaria (13%) followed by Portugal (10%) and Poland (8%). Similar proportion can be found for low-skilled movers of these countries.

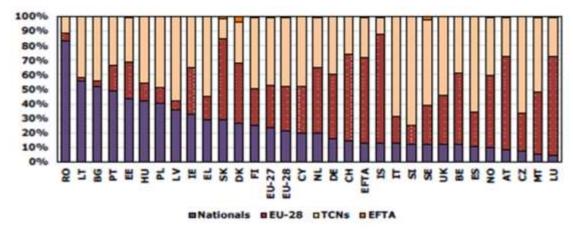


Figure 2. Composition of Inflows by Country

Source: Annual Report on Intra-EU Labour Mobility – 2020

Regarding the return mobility it can be noted a continuing pattern of annual proportional increases since 2011. Looking at the composition of inflows to individual countries EU-13 countries generally have the highest shares of returnees, with returnees making up more than half of the inflows to Romania (83%), Lithuania (56%) and Bulgaria (52%).

Moreover, if we look to available data for ratio of inflows to outflows, it can be notice that the largest outflows in relation to returnees can be found for Italy, Croatia and Bulgaria.

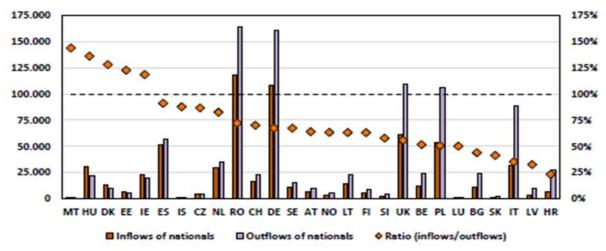


Figure 3. Ratio of Inflows to Outflows

Source: Annual Report on Intra-EU Labour Mobility – 2020

#### **Romanian Policy Initiatives and Institutional Arrangements**

An UN study (2017) outlined that "globally, 72% of governments have policies to encourage the return of their citizens", Romania being one of them. For Romania, migration has been a phenomenon in waves, determined especially by different political objectives and changes. Thus, recent migration has encompassed diverse patterns of temporary and permanent migration and return and it has included highly qualified and low-skilled migrants. However, the below analysis is not an exhaustive study, but rather a highlighting of the main policy initiatives and programmes.

Nowadays, due to different Romania membership and international cooperation, various forms of migration mixed together, resulting an interrelated and dynamic policy issue. At the beginning, the focus of Romanian authorities was on emigration, then to diaspora, and later on return migration, especially

because of lack of workers in different economic sectors. Facing with an increased trend of emigration, the Romanian authorities started to prepare and adopt measures for managing the migration process. From the history of return migration policies can be outlined the 2008-2010 Action Plan concerning the return of Romanian citizens working abroad (GD no. 187/2008), the bilateral Agreement between Romania and Spain from 2009 for collaborative actions in the field of return and reintegration. To date, the main actor with competence in migration, including return migration policies is the Department for Romanians Abroad (the former Ministry for Romanians Abroad), a structure without legal personality, within the Government's working structure.

For 2017-2020 period, the policies document where can be find the objectives and measures for supporting the Romanians abroad was the National Strategy for Romanians Abroad. An analytical analysis of it emphasises that return migration policies are placed on a second level, the vision of the Strategy consisting of "preserving, developing and affirming the identity of Romanians abroad and increasing the cohesion of Romanian communities". Still, for achieving the third objective of the Strategy "supporting the integration processes and defending the rights of Romanians abroad it can be find set of measures aiming to support the return and reintegration process.

These measures include (National Strategy for Romanians abroad 2017-2020):

- Giving assistance and counselling to facilitate the socio-professional integration of Romanians who want to return in Romania. An instrument of doing that is represented by the Return Guidelines.
- Developing of informational packages and conducting campaigns for dissemination information on various topics of interest, such as opportunities to access European and national funds or fiscal facilities for starting a business or for investments, including agriculture, training and education in Romania.
- Facilitating the capitalization in the country of the experience and expertise of senior professionals from the diaspora, from academia, research, management, medicine, etc. and their involvement in the central or local administration.
- Supporting the processes of equivalence of diplomas and qualifications acquired by citizens of Romanian origin in the states from which they returned.
- Supporting the recognition of accumulated seniority for the provision of facilities to support entrepreneurship or employment.
- Carrying out information campaigns to facilitate their socio-professional integration in the Romanian society

Available evidence suggests there is commitment of Romanian authorities for Romanian diaspora and for encouraging the return migration of citizens living abroad. During time, several programmes and activities have been carried out in this sense, for example Financial support for projects in the following areas: reintegration, education, culture, mass-media, civil society, traditions and religion, Romanians Abroad' Museum, Information at Home, Security abroad!, Diaspora Start-up, Guidelines for return etc.

It could be noted that migration policy of Romania is a partnership project, involving various stakeholders from public authorities to private ones and organisations nongovernmental, including diaspora itself. In this framework it should be noted, also the project "Romanians Abroad" of Presidential Administration.

## **Bulgarian Policy Initiatives and Institutional Arrangements**

Similar to Romania, Bulgaria has experienced extremely high emigration rates over the last three decades, so it is seen as an emigration country. According to National Demographic Strategy of the Republic of Bulgaria 2006-2020 the main reasons of emigration in this countries are related to employment, expected opportunities for higher income and living standards, as well as aspirations to a better education and career development. Looking to migration policy framework, carried out after 2007, it should be noted that until now, Bulgaria developed several national migration strategies, two of them for managing the refugee crisis resulting from the conflict in Syria. The first comprehensive document of Bulgarian authorities was the National Strategy on migration and integration (2008-2015) based on two strategic objectives:

- To attract Bulgarian nationals who reside in other countries and people who are foreign nationals of Bulgarian decent in order for them to permanently return to the Republic of Bulgaria.
- To achieve and implement an adequate policy for accepting and integrating foreigners and for implementing an effective control over migrant flows.

The second strategy adopted was the National Strategy in the Field of Migration, Asylum and Integration (2011–2020) developed as part of the Bulgarian government's efforts to meet the requirements of accession to the Schengen Area (Markova & Vankova, 2014, p. 42). The main priorities set up in this strategy were:

- Attracting highly qualified Bulgarian emigrants and foreigners with Bulgarian origin for permanent resettlement and settlement in the country;
- Achieving full access to the labour markets of all member states of the European Union for Bulgarian
  workers and encouragement of the return of Bulgarian citizens, who work abroad to join the national
  labour market.

The core theme of this strategy was the returning of high-skilled emigrants.

The third one is the National Strategy in the Field of migration, asylum and integration (2015–2020), and represents an integrated document for national migration management policies, based on the understanding of migration as both a necessary resource for the national economy and a potential threat to social unity and national security. Based on the previous strategies, through its priorities it can be found (Ivanova, 2015):

- Attracting highly qualified Bulgarian citizens emigrants and foreigners with Bulgarian origin with the aim of permanent settlement in the country;
- Supporting the Bulgarian citizens to use their rights as EU citizens for free movement in the EU and EEA, as well other EU/EEA citizens for free movement in Bulgaria

A particularity of the three strategies consists of the their preference for returning the high-skilled movers outlining step by step a broader framework for references from historic diaspora to Bulgarian nationals working abroad and later attracting Bulgarian emigrants back to Bulgaria with a view to their definite return.

For achieving these strategic objectives, the Bulgarian authorities used forums, programmes, trainings, labour and information fairs, dialogue (Ivanova 2015), such as: Bulgarian Eastern, Career in Bulgaria. Why not, Nature and Culture at Borders, Bulgarian Dream.

#### In Brief

In the last decades, in a context of emerging policy issues and convergence objectives we are witnessing an increasing travelling of public policies (policy transfer, diffusion, learning-lesson, policy circulation so on) and challenge the methodological nationalism on policy making. Still, migration differs from case to case in quantitative and qualitative terms and depends among others by other sectorial policies and by their effectiveness, since it has a transversal character. These affects also the return migration dimension and although there is a framework for international and European migration governance and for lesson-drawing and policy transfer there is no harmonized approach to return migration. Moreover, migrants for various reasons, including: successful completion of their migration objectives or targets; retirement; lack of success and poor integration in destination countries; family reasons and policy makers need to take into consideration that internal and external factors.

Cerase's typology of returnees shows one again that situational or contextual factors in origin countries need to be taken into account as a prerequisite to determining whether a return experience is a success or a failure (Cassarino, 2004).

Therefore, there is no international or EU community of practice that has emerged around the emigration issue (as opposed to the immigration issue), and despite all national features it should be noted that there are consistent premises for policy transfer between two countries, certain programmes sharing common principles, but a prerequisite for that is a more coherent and convergent responses among governments.

Moreover, the attention paid b scholars and international organisations to the link between migration and development has outlined the need to revisit approaches to return migration.

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