
INTRODUCTION

Western Europe is presently a region of intense immigration; great numbers of people coming from difficult political, social and economic situations, choose Europe as their safe haven. For many it is, to some extent, a choice and they can decide to go back to their original countries whenever they want, while others are forced to emigrate in order to escape persecution in their home countries.

The movement of third country national TCN is not a new phenomenon for Western Europe as Western countries have always experienced continuous migration and given refuge to asylum seekers.

Nevertheless, only since the late 1980s have such migratory movements become a major concern due to changes of internal and international factors, and are now regarded to be of primary and common interest for the Member States of the European Union (EU).¹

The research analyses the development of the legal framework of the European common immigration policy. An EU integrated policy covering all aspects related to TCNs does not exist but very important steps, consolidated in the Amsterdam Treaty, have been taken in the last decade (1989-1999). The strategy to adopt at EU level in the area of immigration is still not very clear and coherent due to the complexity of the area itself and because of the different approaches of the EU institutions on the answer to give to immigration issues.

The research covers the study of the migratory flows and the evolution of their regulation under EU and EC law in a historical perspective with projections looking at the inevitable enlargement of the EU towards Central and Eastern Europe. Specific reference to international agreements and to national immigration rules is made when necessary.

¹ Presently over a third of the current meetings which the Council Secretariat services and over 40 per cent of the paper which circulated are concerned with justice and home affairs. House of Lords Debates, 1747, 6.11.1998.

The analysis also examines the main factors that have contributed to the adoption of such a European immigration policy in fifty years of Community history, namely economic, security and racial factors. In particular, it evaluates the impact of the new restrictive policy towards third country nationals, focusing on racial and ethnic minority groups. Among these groups special attention is reserved to the position of women. The research demonstrates how the new rules on immigration although not directly sexist or racist can, however, have an enormous impact on racial and ethnic minorities and women.

Several reasons justify the decision to concentrate on TCNs belonging to ethnic minority groups and female migrants. First of all, it is important to remember that the large majority of TCNs already settled or arriving in the EU (70% of the migrant population of which around 50% are women) are from poor developing countries. They possess a different "ethnicity" compared to what is assumed to be European, although an increasing number of the extra-Community population arrives from the white, rich and developed world. This latter group, composed of managers, diplomats, specialists of multinational companies is barely regarded as a problem contrary to the non privileged TCN labour migrants. Moreover, notwithstanding the wide concern and protection guaranteed under the most important human rights conventions, to which the majority of the European Union States have acceded, *sex* and *race* are among the most relevant factors of discrimination, whether direct or indirect.²

Finally, the decision to evaluate the position of women, which must be considered as a sub-category, is justified by the fact that women often suffer racial discrimination as do their male counterparts due to the emerging restrictive European rules *however* taking into account that "both societies of origin and societies of immigration are to a different extent and different ways marked by sexist ideologies"³ they also suffer a more specific, gender-related discrimination, which is worth investigating, whenever it is possible.

For practical reasons the study is divided into four parts. The first part deals with issues and problems of a general character, which are required in order to introduce and to place in the historical context the matters analysed in depth in the following sections. By means of the study of the immigration figures, it is possible to distinguish three main periods in the migratory movements and of their regulation in Europe, which have been influenced by economic, security and race

2 As Greenberg recalls "mere inspection of the basic international human rights documents demonstrates that racial, sexual, and religious discrimination are, certainly in terms of attention paid on the face of the agreements, the overarching human right concern of the international community". Greenberg J., "Race, Sex, and Religious Discrimination in International Law", in Meron T. (ed), *Human Rights in International Law, Legal and Policy Issues*, Oxford Clarendon Press, 1989, 309.

3 Morokvasic M., "Fortress Europe and Migrant Women", *Feminist Review*, 1991, Vol. 39, 71.

factors. The research shows how in the last phase of immigration, from 1989 onwards, race factors have become very important in the elaboration of the common immigration policy. It follows the analysis of the compatibility of the EU immigration policy with the best European democratic and liberal traditions. The second part analyses the relevant provisions of the EC/EU regulation related to TCNs legally settled within the Union. The analysis shows the divergence in the regulation of the position of EC migrants and TCNs in the evolution of immigration rules and the increasing gap between the two categories. The research likewise shows the contradictions in the development of immigration rules as regards the EU commitment to the fight against phenomena concerning sex and race discrimination because as has been demonstrated, the rules adopted, whether directly or indirectly, are often racist and sexist. Discrimination of the extra-Community population compared to EC citizens can take place in other important areas, because, only incidentally, EC provisions on free movement of persons and in the social field, are applicable to TCNs. Until recently, the lack of any planning at EU level has made the regulation in this area of immigration very chaotic but it is always possible to identify certain patterns, which are also confirmed by the several agreements signed by the Community and third countries. The Amsterdam Treaty (1998) does not represent a U-turn in this area but a further confirmation of the tendency of exclusion of the extra-Community population, although some important concessions have been made. Unexpected evolution can nonetheless occur by the extension of Community competence to these areas, from pressure coming from the European Commission but, especially, from the European Parliament. In this respect it should be noted that Member States have committed themselves in the European Council held in Tampere (15-16 October 1999) to adopt a more liberal and generous policy in the area of immigration.

The third part analyses immigration policies and rules related to TCNs admission from outside the Union. This area of immigration has been subject to a growing and more organised EC/EU involvement in the last decade. It results clearly that, except for very few concessions, largely due to the influence of the European Commission or the European Parliament, a very restricted approach has been privileged. Despite general statements and commitments about the respect for democratic and liberal values, EU policy is aimed at creating a fortress Europe, particularly unreachable for certain migrants. It has in fact been demonstrated that the new rules are concerned with the *quantity* as well as the *quality* of new arrivals, in order not to get the *wrong* migrants. TCNs arriving from Black countries are the most unwanted. Such an exclusionary tendency is present in the elaboration of all rules concerning admission, including family reunion immigration.

The last part concerns EU policing and expulsion measures. The creation of a fortress Europe has required the Member States, which have dedicated important

energies and funds, to set up and enforce a system of controls in order to avoid TCNs from eluding stricter immigration rules. Again, it has been demonstrated that, although often disguised, the new rules are more likely to affect racial and ethnic minority groups and women.