MIGRATION – THE THREAT OR THE CHANCE OF DEVELOPMENT FOR THE CITY?

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Abstract: The article deals with the phenomena of human migration, especially migration from the rural surroundings to the city structures and legal approach to it. Author describes the acknowledgment and legal regulation of the migration into the city structures in ancient world (e.g. in Roman law), deals with the contemporary legal concepts related to this sort of migration in Polish law and evaluate the impact of EU law approach to this question. Finally author pleads against the protective and closing regulations and call for the open approach to the in-city migration flows.

Keywords: Migration, local government, rural space, urban space, legal regulation, openness

I. Great migrations from a historical perspective

Population movement is the phenomenon immanently linked with the history of mankind. People have moved for ages, usually searching the better living conditions. However, there have been also the other reasons of migration of nations, like a plunder, a conquest of the new territories, or providing for the religious needs. The migrations were undertaken by the whole nations, but also by the smaller groups or tribes, which later became the origin of big national groups.

The oldest, known mainly from the archeological excavations, was the Indo-European migration of nations towards the west of Europe, which took place between IV and V millennium Before Christ. That event had the determinative influence on the ethnic, and indirectly, cultural form of the contemporary Europe. Though, together with those nations came the Italics, German people, Celts, Hittites, Medes, Persians, or Greek people[1]. The following great migrations

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1   See. R. Lopéz Melero, D. Plácido, F. Presedo, *Historia Universal.* Edad Antigua. Grecia y Orinte Proximo, Barcelona 1992, p. 5 and following.

took place in III and IV centuries AD, when the territories of the Roman Empire were invaded by the barbaric nations: Vandals, Huns and German people, contributing considerably to the fall of the empire[2].

The most famous migration of the smaller tribal groups is the peregrination by Abraham, from Charan to Canaan, in other words, to the territories of contemporary Israel, which was inhabited then by different tribes. The group of people was relatively small. According to the Bible message, the head of that group was Abraham together with his nephew Lot and their dependants, who, in this case, should be understood as the members of the tribe[3]. They became the origin of the Chosen People.

The birth of Islam at the beginning of VII century initiated the gradual polarization of the world of that time, to the Islamic and Christian parts. Both parts quite quickly became culturally and politically closed, in this way, making impossible any migrations between those two worlds. The basic form of the migration of the groups of people in the Middle Ages were the conquests carried out both, by the Muslims and by the Christians.

Nowadays, the phenomenon of the people migration fundamentally differentiates significantly from that previous ones, from the past. The appropriate international regulations exist, therein in the European Union legislation. There are also the suitable systems of the emigrants control bodies. Moreover, within this framework, there is worked out, the appropriate policy of the individual states and the international community. Nowadays, the most common purpose of the migration, particularly from Africa and Asia, is searching the better living conditions.

Not going too deeply in the historical analysis of the migrations, there should be realized that mixing the population leads first of all to the profound cultural transformations. The fear of these transformations leads to the contemporary fight among the civilizations[4]. Also in Europe the local communities experience the fear of the inflow of the outsiders, which are culturally unfamiliar, chiefly those of the Muslim faith. The analysis of the legal rules also indicates that the status of the newcomers, even today, is always worse than the status of the native people.

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2   E. Gibbon, *Fall of the Roman Empire on the West*, translation from English, I. Szymańska, Warszawa 2000, p. 50.

3   Chapter 12,4–5.

4   The Pope Jan XXIII in his encyclic Pacem in terris, item 130, issued in 1963 r., stated that the armaments race between the Soviet Union and the USA will be replaced by the fight between the rich north and the poor south. The Polish edition of this encyclic see: Pope Jan XXIII, Encyklika o pokoju między wszystkimi narodami opartym na prawdzie, sprawiedliwości, miłości i wolności (Pacem in terris), Paris 1964.

In the further part of this short work I will stop only at some specific aspects of the relationships occurring among the local communities and between the original residents and the immigrant population. The analysis will be carried out from the perspective of the legal regulations existed in the Roman, Polish and Union law. It will allow to reveal the fears of the local communities, appearing because of the inflow of the outsiders culturally unfamiliar.

II. The Roman law

The organization of the ancient world was based on the culture of cities. Each local community was autonomic, and even in broad understanding of this word , it was sovereign. The model example of such organizations are the Greek polis. Each of those cities had their own public authorities, their own law, the army and the policy. The Greek influences on the Apennine Peninsula prejudged about the form of the organization of Italy. Till the Punic wars there were, in principle, the independent cities, they cooperated among each other only on the basis of the existed contracts concluded by them. Only just in III and II centuries BC the process of cultural unification of Italy was initiated, creating in this way, one nation. The expression of the existence of the consciousness of Italian people in regard of creating the common nation is the inscription which comes from 193 BC, and which was found on the Sicily. The inscription commemorates raising the monument by *Italici* in honour of Lucius Scypion[5], the conqueror over the enemies' armed forces.

The expansive policy of Rome results in the loss of the sovereignty of the cities states. However, the wide ranging autonomy of the local communities was preserved. They held their own constitutive bodies ordo decurionum and the executive bodies – duumvirs, ediles and questors. Moreover, the whole clerkly instrument existed – *apparitores*.

The municipalities were entitled to keep in touch among each other, among other things, through sending the delegations (*legatio*) to different kinds of celebrations. The legations in Rome usually consisted of 10 people – *decem legati.* Whereas in municipalities that number was significantly lower and it did not exceed three members[6].

The fundamental element of life in the local communities was the trade. The numerous groups of traders, chiefly from the east, paced through the territory of the Roman state. They wandered from one city to the other. The migrating traders transferred with them the new ideas, apart from the economic aspect. Hence, they became the unintentional instrument of mixing the cultures of the ancient

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5   See. J.S. Reid, *The Municipalities of the Roman Empire*, Cambridge 1913, p. 85.
6   About the origin and the development of legations in Rome, see. B. Schleussner, *Die Legaten der römischen Republik. Decem legati und ständige Hilfsgesandte,* München 1978, s. 9 n.; L.A. Curchin, The Local Magistrates of Roman Law, Toronto 1990, p. 65 and following.

world, creating the multicultural communities. Even of more importance was the fact that the numerous traders settled down in different municipalities, quite often taking up the teaching.

Similarly like nowadays, the people changed the places of residence searching jobs, or because of matrimonial reasons. In this way, there were two groups of citizens created in municipalities. The first one *municipes*, which means the citizens having full rights, and the second group *incolae*, which means the influenced people, which was in the worse legal situation than the first one[7].

In each municipality the most important category of citizens constituted the *municipes*, in other words, those who lived in the given municipality from their birth (*municipalis origo*)[8]. They had the full civil rights, chiefly the political ones. In case, if the place of birth *(origo)* was not the city, but any of its fraction, as for example *conciliabulum, forum* or *praefectura*, then, it was assumed that the place of birth was *gens, civitas* or *regio*.

The second category in the Roman municipalities constituted those who were not born in the given city, and they only had the domicile – *incolae*[9]. However, not all the newcomers in the city could be determined as *incolae* , but only those, who possessed the land and the place of living, within the borders of the city – *domicilium*.

The existence of those two groups, within the local communities, particularly on the west of the Empire, appears in two different dimensions. First of all, the citizens with full rights had the access to bear the offices in the city, such as: duumvirs, ediles or questors. Whereas, within the framework of bearing the duties, that was the burden of all the citizens, also the people not being the citizens of the city. Those duties were both, the physical work and the fiscal duties.

From the perspective of the threats of people migration, there should be stated, that the society of that time was multicultural, and for that reason, it was more tolerant. The Romans were ready to tolerate the other beliefs, the foreign customs and as a consequence, the other systems of values.

The fears about the preservation of the influences on the local authorities were guaranteed through introducing the restrictions in the access to the public

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7   More about obtaining the citizenship in Rome, see: A. Jurewicz, T*he Mobility of the population and obtaining the citizenship in the Roman law – some chosen problems,* [in:] *Free flow of people from the perspective of the European integration process.* Atti della IV Conferenza Internazionale dei Diritti dell'Uomo, Olsztyn 2002, p. 290 and following.

8   Paul. lib. sing. de cognitionibus (50.16.228): „Municipes" intellegendi sunt et qui in eodem municipio nati sunt (There should be accepted that the municipes were those who were born in the given municipality).

9   Pomp. lib. sing. enchiridii (50.16.239): „Incola" est, qui aliqua regione domicilium suum contulit: quem Graeci paroikon appellant. Nec tantum hi, qui in oppido morantur, incolae sunt, sed etiam qui alicuius oppidi finibus ita agrum habent, ut in eum se quasi in aliquam sedem recipiant.

offices by the people not having the Roman citizenship. Generally, the munici-palities kept the right relationships among each others, among other things, the economic relationships. The expression of good relationships was, sending the delegations to the celebrations with the specific messages.

III. The Polish law

On the basis of the article no.1, item 1 of the act about the local government[10], all the citizens create the residential community, by virtue of law. According to the article 25 of the civil code[11], the members of this community can be only the natural persons, who have the intention of the permanent staying at the territory of the community. Therefore, possessing only the permanent documents, it is not enough. It is necessary to declare the will of permanent staying, for example by the factual inhabitation or by doing business. In the jurisdiction there is also the notion of concentrating the life centre of the given person. In the judgment of the Administrative Court in Opole from 27th April 2007, sign. Act I C 395/06 there was stated that to determine the permanent place of living this is necessary to transfer not only the inhabitance, e.g. through buying the house, but also trans-ferring the place of work, the place of paying the taxes and to do this at relatively short time. It cannot exceed several months[12].

According to the article 32 of the Constitution of the Republic of Poland[13]all the people are equal in relation to law, what, at the same time, implicates the duty to treat equally all the citizens of the community by the authorities. Nobody can be discriminated by the authorities because of the political, social or eco-nomic reasons. There are, therefore, no legal basis to introduce the division to the inhabitants of the community, and those who reside there temporarily or illegally.

However, there is an exception from this rule, if we mean the active and pas-sive election law. According to the article 5, item 1 of the legal act, the elec-toral system to the community councils, administrative district councils and the regional councils of the voivodeships[14], the active election right to the given council has each Polish citizen who is 18, on the day of voting, and who perma-nently lives on the territory of the activity of the given council. In the item 2 of the same article, there were specified some cases excluding this right, namely, the active election right to the community councils do not have the persons:

- deprived of the public rights by the valid decision of the court;

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10   Official Journal from 1990. No. 16, pos. 95.
11   Official Journal from 1964. No. 16 pos. 93.
12   The judgment is given according to:
http://www.bip.mswia.gov.pl/portal/bip/4/15930/Nabywanie_nieruchomosci.html [1 V 2010].
13   Official Journal from 1997. No. 78, pos. 483.
14   Official Journal from 2003. No. 159, pos. 1547.

- deprived of the election rights by the decision of the State Court of Justice;

- incapacitated by the valid decision of the court.

The consequence of the Polish membership in the European Union is the fact, that the right to the election to the community council has also the European Union citizen who is not the Polish citizen, who is 18 on the day of voting, and who permanently lives on the territory of the activity of this council. The right to vote does not have the citizen of the European Union, who is not the Polish citizen and who is deprived of the right to vote in the member state of the European Union, where he is the citizen[15].

The above time censorship results from the legal and natural prerequisites and is not the discrimination symptom. The person participating in the election has to make the conscious choices, however, there is needed here not only to use the mind but also to have the basic knowledge about the subject.

The community citizens create the self govermental community, which means that they are linked to each other not only by the legal connections but also by the cultural and economic links[16]. In the cultural aspect, there is not common, the conception of the community based on the natural unity, which means the blood ties or the common origin, what was also typical for the oldest period of the Roman and Polish statehoods. The dominating community was then the tribal community. The contemporary cultural ties are based on the rule of multiculturalism, neighborhood and friendship (toleration). Multiculturalism assumes the possibility of coexistence of many cultures, also the religious ones, even in the small local government communities. The neighborhood results from the fact of the co inhabitance. The friendship is therefore the condition and at the same time the result of the corresponding work, and the same common activities[17].

The economic links are extremely important for existing the self government community. The natural persons very often migrate searching jobs or the better conditions to run their own business activities. The local communities cannot introduce any restrictions or the instruments discriminating the outside subjects to run their economic activities on the territory of the community[18]. To realize

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15 More about the right to stay on the territory of Poland by the European Union citizens, see: W. Brzęk, *The right to stay in Poland by the European Union member states citizens and the members of their families [in:] Free flow of people from the perspective of the European integration process.* Atti della IV Conferenza Internazionale dei Diritti dell'Uomo, Olsztyn 2002, p. 88 and following.

16 See: A. Agopszowicz, Z. Gilowska, T*he act about the communal local government, Commentary,* Warszawa 1999, p. 42 and following.

17 See: F. Tönnies, *The theory of community,* [in:] Cultural anthropology. Part I. Questions and the choice of Texts, Warszawa 1996, p. 320 and following.

18 See: M. Królikowska-Olczak, *The economic freedom in the community law* [in:] The free

their purposes the communities can join together into the unions or associations. In this way they can better realize their tasks.

The common activities are not perceived nowadays as the threats, but as the possibility to achieve the better economic or other results. The similar situation is with the development of the cultural initiatives. Their joining together is not perceived as the kind of the threat for the local community.

IV. The European law

In the Treaty on the European Union, the question of the local self government is described in the article no. 4 of the act. The European legislator constitutes there: *The Union respects the equality of the Member States in relation to the Treaties, as well as their national identity, linked inseparably with their basic political and constitutional structures, therein, in relation to the regional and local self government. It respects the basic functions of the state, particularly the functions aiming to assure the territorial integration, preserving the public order and the national security protection. In particular the national security stays within the framework of the exclusive responsibility of each Member State.* From this text we understand that the Union does not intervene into the organizational structure of the individual member states. Because of existing the EU diversity of the self government organization and the differences of the terminology, in the community charters there are the notions the regional and the local self government. The local one can be identified with the community self government.

The European Union policy continues the European Community policy, they preserve the wide ranging local communities autonomies. It only assures the suitable legal regulations allowing the free flow of people, services and capital and the proportional development of the economically weaker regions. There were implemented different kinds of community policies and programmes, therein the coherency policies[19].

Moreover, the European Union respect the equal treating of all the union citizens chiefly on the local level. The expression of it is the common active and passive election law in the self government elections, independently on the owned citizenship. Such powers acquire the citizens of any member states, having in this way the right of the European Union (article 8 of the Treaty on the European

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flow of people from the perspective of the European migration process . Atti della IV Conferenza Internazionale dei Diritti dell'Uomo, Olsztyn 2002, p. 72 and following.

19 Summing up the Union Policy of cohesion took place at the conference in Vienna and Bratislava, which was held on 19th-21th April 2010. See: the report on the website http://ec.europa.eu/regional_policy/cooperation/danube/conference/vienna_bratislava_en.htm [1 V 2010]. See also: S. Naruszewicz, The policy of cohesion of the European Union. The chosen questions, Warszawa 203, p. 275 and following.

Union)[20]. Giving the active or passive right to vote to all the citizens exists also in the Charter of Fundamental Rights from 2000. In the article no.40 of the legal act: *Each Union citizen has the right to vote and to be the candidate in the local elections in the Member State where he has the place of residence, on the same rules as the citizens of that State[21].*

The multicultural character of the European Union prejudges about the necessity of undertaking the common activities on the local level through joining the various enterprises. Just precisely the multicultural activities have the chance to obtain the financial support in numerous projects. However, it does not mean the resignation from the previous culture. There are a lot of European programmes supporting the existing culture.

V. Opening the local self governments the chance or the threat for Europe?

During my yearly stay in Munich, from 1989, I had the opportunity to observe the profound transformations occurring in the heart of the symbol of Germanity. Twenty years ago, at the Marienplatz the German people dominated. There were a lot of German restaurants everywhere, the famous Gasthouse, the German banks and offices. On the underground there were in general only the white people. Over the years I have had the chance to see the transformation of this city into the multicultural centre. Now, at the Marienplatz, the majority of people are the Arabs, Hindus, Latin Americans or the people of Asian origin. Good German restaurants can be found only in the German villages. It is extremely difficult to find in the centre of the city any institution which is the symbol of Germanity, as for example the *Deutsche Bank*. On the underground (*U–Bahn*), the white people constitute the vast minority. Therefore, what conclusions can be drawn from the described transformation of the typical German city? Some people think that the disaster is approaching, the consequence of which will be the end of the white people. The others state that it is good, we are learning the tolerance, obtain the new hands to work, what is extremely important in relation to the senescenting Europe. Everything provokes in the end the birth of the new culture.

It seems to me that both these opinions do not answer the question asked in this work. Namely, what consequences can appear in the future because of so wide opening of the local communities in Europe on the newcomers from the other continents? I think that we had it behind, that fear of the new, which accompanied the old societies, till the 20th century. Thanks to the Christian values, the Roman law and the natural law current, this is obvious that all the people are equal, they have the right to manifest their convictions and beliefs. This is

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20 See: M. Sitek, B. Dobrzańska, *s.v. European Union citizenship*, [in:] *Polish-English mini – lexicon of the European Union questions,* Józefów 2009, p. 46.

21 The text according to: A. Bałaban, *The human rights protection. Introduction and the chosen source texts*, Gorzów Wielkopolski 2003, pp.2. 88.

the obvious truth, even from the perspective of the organized fight against the Christianity and its system of values.

The possible threat caused by the civilization transformation, particularly by the migration, giving the birth of the negative results for the local communities, is the threat of the terrorism and the increase of the crime.

There should be realized the different forms of the terrorism and their purposes. From the point of view of the subject of this work the internal terrorism has its importance[22], which is the consequence of the lack of the full integration of the immigrant population with the existing state of things[23]. The example can be the burst of social dissatisfaction and as a consequence the terroristic attacks around Paris, which took place in 2005.

The local communities can feel threatened also by the international crime. The media news inform the society about arresting the wanted boss of mafia in one of the Polish towns, for example, in Krosno or Lwówek Śląski[24]. Hence, the European Union implemented the numerous instruments to the fight against the crime, particularly against the organized crime. It is worth to indicate here such the institutions as: Europol, Interpol, the Schengen Information System SIS. The extremely important instrument to fight against the crime is the European arrest warrant, thanks to which the criminals cannot feel safely on the territory of the European Union. Also in this case, the media informs about the newer and newer criminals arresting from Poland e.g. in Barcelona or Athens[25].

In the end, the local communities can feel the economic threat[26]. The bigger firms, richer in capital, can easily transfer from one end of the Union to the other and to win the tenders called for by the local self governments. However, the regional Union policy assumes the equality of all the economic subjects, therefore, it is impossible preferring any local economic subjects, and discriminating the others. However, in practice, such the phenomenon occurs. The local lobby, often linked with the local authorities, arranges the auctions according to the predetermined economic subjects. The need of the economic security is better

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22 The internal terrorism is the combination of social behavior contradictory to the particular interests of the local community. In this way " advertising" the particular local or religious group.

23 See: M. Romańczuk, *Free flow of people and the phenomenon of the internationalization of the terrorism* , [in:] Free flow of people from the perspective of the European integration process. Atti della IV Conferenza Internazionale dei Diritti dell'Uomo, Olsztyn 2002, p.109 and following.

24 See: http://www.emetro.pl/emetro/1,50145,1966123.html [1 V 2010].

25 See: W. Pływaczewski, *Free flow of people from the criminal perspective,* [in:] Free flow of people from the perspective of the European integration process. Atti della IV Conferenza Internazionale dei Diritti dell'Uomo, Olsztyn 2002, p. 83 and following.

26 More about the economic security see: W. Pokruszyński, *The contemporary national security* (academic textbook), Józefów 2009, p.21.

visible after the bankruptcy in Iceland and Greece and in relation to the threat that the same fate can happen in Portugal and Spain. The local communities, in relation to such a perspective, close more and more on the foreign firms, to move away the specter of the economic disaster.

Conclusion

The migration of people for ages has aroused the fear and threat of the new, among the native people. From the moment of inventing the system of law, the most effective instrument of protecting the local communities, became the preclusion of the access to holding the most important offices in the authorities of the local communities. It was realized that the newcomers, if there were the traders, teachers, or the enemies of the army, they carried with them the threat for the local beliefs and customs. There was the same situation in the Ancient Rome and there has been till the 20th century.

However, this is necessary to become aware that nowadays the culture which dominates in Europe was created on the basis of mixing four cultures, Greek, Roman, Judaic and Christian. It seems that also nowadays this is necessary to open towards the new cultural currents, however, which do not destroy the existing state of things.

These fears and treats of the new look more different from the local perspective, in other words from the perspective of the community self government. These communities are particularly sensitized to any changes. Hence, the European Union through its regulations enabled also the non citizens of the given state, and the Union citizens, an active or passive participation in the self government elections.

As the result in Spain, France or in Italy, in many communities the mayors are the community dwellers, who are not the citizens of the given state. Thus, Barbara Czarniecka Yerolemou became the mayor of Ealing in Great Britain. Is this possible that in Poland, for example, the German woman would become the mayor?