



VALTIOTIETEELLINEN YHDISTYS
STATSVETENSKAPLIGA FÖRENINGEN
FINNISH POLITICAL SCIENCE ASSOCIATION

13. Migration and security

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Työryhmän kuvaus: With no doubt, the 9/11 attacks were turning-points in revising migration policies in the Western world and redirecting the decision making of many national and supra-national courts. In this regard, the approach of the European Union and the ECtHR specifically is of high importance. For example, how the ECtHR, aftermath of the 9/11 and under the influence of series of terrorist attacks in major European capitals overruled its earlier judgments in safeguarding the principle of non-refoulement. Any observer could easily predict that the November 2015 Paris attacks, similar to the 9/11, is also a critical moment, which will have decisive impact on setting different policies on the issue of migration in the EU. For instance, we are witnessing how since 14 November 2015 France has been pressurizing the European Parliament to enforce new external border controlling mechanisms, otherwise France will take some actions in this regard autonomously.

Accordingly, challenges will arise based on our current expectations of migration. We now have migrants whom we mainly believe resulting from conflicts and wars. Some of them may also be economic migrants, seeking for better life. What's more, there will surely be more migrants escaping climate change during the coming years, so called climigration. Migration flows happen both in regular, authorized manner as well as in irregular, unauthorized or even clandestine manner. In other words, migration in all its forms is persistent and thus prone to the implications the states have taken or are likely to take in order to combat terrorism and defend its interests of national security.

These combating interests of an individual and of a state create contradictory issues concerning one's human rights and legal status, realistic means to be able to migrate and reside legally in a state, and for a state respectively issues concerning its discretion in migration and national security. Taking into consideration the present day conditions, the ECtHR, that is regarded the most powerful human rights organ to date, has to balance between making decisions which are affected by international politics and human rights considerations. Suggested areas/topics for papers and discussions:

- Is migration a security-related issue? (securitization of migration)
- What are the implications of terrorism on migration policies? What kinds of forms of migration are produced through the states' more restrictive immigration policies, will there be new forms of irregular/unwanted migration?

- Which one comes first? Security or human rights? Could there be any possible resilience between them? A state's interests (security, margin of appreciation in (im)migration issues) and an individual's competing interests (human rights) in contradiction.
- The era of "Global War against Terrorism"; how can democratic institutions handle that?
- How much the ECtHR is securitized? What is the role of the ECtHR? The ECtHR's standpoint on "Global War against Terrorism", extradition treaties, extraordinary renditions, legal and human rights status of migrants and aliens in security-related issues, human rights obligation and the width of the margin of appreciation of a member state etc.
- Paris' November 2015 Attacks, another 9/11; what's next? Are they turning-points in not considering migration from a democratic point of view?

Abstraktit:

The European Court of Human Rights: A Guardian of Minimum Standards in Immigration Context

The innovative use of the general doctrines and the nature of the European Convention on Human Rights as a living instrument have enabled the progressive protection of immigrants. This research will illustrate, how the immigration case-law of the European Court of Human Rights has been evolving in the past years. The Strasbourg jurisprudence sets a minimum standard for the European immigration policy limiting the sovereign rights of the states to exercise their security policy. The paper discusses the legitimacy of the ECtHR to set minimum standards on issues involving public interest, such as public security in immigration context.

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Securitisating migration? EU's Common Security and Defence Policy and the case of EUBAM Libya

This paper will approach the issue of migration and security from the perspective of the European Union Common Security and Defence Policy (CSDP). The paper will analyse the CSDP mission EUBAM Libya, asking whether securitisation of migration and externalization of the EU's borders has become a priority for the EU, preceding concerns on human rights. The CSDP mission EUBAM Libya is a non-executive civilian crisis management mission, with a purpose of supporting the Libyan authorities in improving the security of the country's borders. The mission was established in May 2013, but since the summer of 2014 it has been on hold due to the collapse of the Libyan state. The mission will be used as an empirical example through which it is analyzed how the EU's need to control the flow of migration has found its way to the policy formulation and operational level of its civilian crisis management operations and what problems this might pose to the EU's crisis management instruments.

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Practices and Limits of Ethnic Profiling and Immigration Controls by the Police Forces in Finland

The phenomenon of ethnic profiling of minorities by security authorities is affected by two major tendencies of EU migration law and policy. On the one hand, anti-discrimination legislation has increased protection against discrimination at least on a formal level. On the other hand, anti-terrorism measures and the increased securitization of migration has resulted in intensification of discriminatory policing practices in recent years, according to several studies. These contradictions and problems are also very relevant in Finnish immigration law and policy, especially during the current crisis of the asylum and border policies. In my presentation I will first introduce the project Stopped Spaces, Meanings and Practices of Ethnic Profiling, that examines the prevalence and the forms and practices of ethnic profiling by the police in Finland, as well as interpretations of the situations of both people experiencing profiling and the police. The research uses several methods and data: individual and focus group interviews, participatory observation and survey questionnaires. The three-year project is funded by Kone Foundation (2015-2018). Secondly, the presentation includes some reflections concerning definitions of ethnic profiling, juridical limits of immigration controls, problems of monitoring profiling, and legal protections against discrimination by security authorities in the Finnish context.

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The legal analysis of diplomatic assurances in the cases of expulsion to torture

The clash between human rights and States security is as old as creation of human rights law. One of the practices in this regard is diplomatic assurances. UNHCR has defined diplomatic assurances, in the context of transferring a person from one State to another, as an undertaking by the receiving State to the effect that the person concerned will be treated in accordance with conditions set by the sending State or, in keeping with its human rights obligations under international law. What makes this practice contradictory is that being committed to Global War on Terror and the importance of safeguarding national security has urged States to return suspects of terrorism to countries known to torture. On the other hand, the principle of non-refoulement, as a fundamental norm of customary international law, has raised concerns regarding the legality and permissibility of expulsions to torture. This paper critically analyses how Global War on Terror discourse is the possible justification for creation and acceptance of diplomatic assurances and mitigating on jus cogens norms. In other words, it addresses the same debates which were employed to justify enforced disappearances, enhanced interrogation methods against prisoners of terrorism and subjecting them to the practice of torture.

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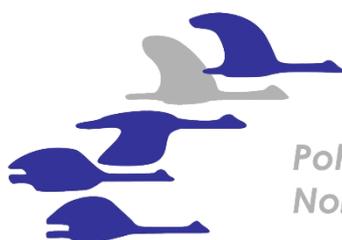
Human rights based approach to restrictive migration policies that generate irregular migration

When having a look at the national law drafting and public debate or to the case law of the European Court of Human Rights, the state attention seems to be focused on referring to economic and security-related reasons when states pursue their restrictive immigration policies and narrow the space of regularity. As a consequence, the state is in fact generating forms of irregular and undocumented migration.

In this paper I strive to describe, how the irregular forms of migration are produced via states' restrictive immigration policies and legislation based on the argumentation of security and economy related issues. Irregular migrants are in reality living outside the scope of a state's human rights protection and thus they are extremely vulnerable individuals. In this paper I observe the problematic legal and human right status of such an irregular alien, especially in the context and as a consequence of security-related and economic issues referred to by the states. Respectively, I will analyse the balancing of competing interests, such as the state's width of the margin of appreciation in (im)migration issues and other national interests and the competing interests of a single individual such as basic human rights.

Accordingly, in times of economic hardship human rights are tend to be provided only to a limited extent, although economic grounds are not grounds strong enough to make limited human rights action acceptable. Fear of threatened national security or terrorism together with sensed security may have changed and respectively had implications to the state immigration legislative proceedings. In this paper I will observe whether state security and economy can be regarded together, resulting in generating irregular and undocumented migration.

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