

Decision Making Process as Theoretical Reference in the Analysis of Illegal Migration

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Abstract: Illegal migration is a global phenomenon, Romania being no stranger to it. In post-modern society, the attempt to analyze this type of phenomenon is not without obstacles, given its dynamics, the proportions reached, as well as the actors involved, whether it is migrants, traffickers or authorities. From a criminological point of view, a possible path to be followed in the analytical approach is the rational choice theory, but although this model of analysis is a valid one, taking into account its limitations, it is necessary to compensate them by elements derived from other types of theories used in criminological science.

Keywords: migrant; illegal migration; transit country; rational choice theory; decision making process

1. Illegal Migration – Context

Nowadays, in the context of what is already known as the "migration crisis", for many government officials, especially those elected by direct vote, whether migration is regulated or illegal is a rather complicated dilemma, namely, how to "Reconcile" the demands of their own citizens with the (humanitarian) interest of migrants. The answers differ, one of those who enjoyed a wide media coverage being the case of Hungary and its already well-known fence.

The criminological perspective and the logic make us think that, in the 21st century, building higher and higher fences cannot be the answer to manage the migration phenomenon. Efforts to combat migration undertaken by governments, law

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enforcement agencies should be directed especially at the trafficking of migrants, traffickers, guides, carriers and not those who fall victim to them. Otherwise, paraphrasing what Kofi Annan said in the "Migration Realism" speech, there is a real risk that migration will become an "underground" phenomenon which, in time, will provide new organized crime networks with new development opportunities based on despair and the hopes - most of the time, empty - of the migrants.

The situation of Romania in the context of migration is one that takes forms with a specific character, migration, whether it is regulated or not, being not a foreign phenomenon to the territory as well as to the Romanian society.

Over time, Romania's migration profile revealed variations – this territory being, especially at the end of the 19th century, one of the European countries of destination for migrants, located statistically immediately after Switzerland (Negruți 2017, p.212) Statistical data indicates a number of 467,394 foreign citizens on the Romanian territory, representing 7.9% of the total population; at the beginning of the twentieth century, it is among the first states to recognize the importance of managing the problem of migration, especially from the perspective of the host society, which is why the national legislation of the time undergoes some changes and, in 1925 *the Law no. 1,206 regarding the regulation of migrations* and *Regulation no. 2,078 for the application of the migration law* are issued. During and immediately after the two world conflagrations, there are strong migratory movements that mark the territory of Romania, so that during the Cold War, Romania will become almost exclusively a source country of migration, mainly clandestine.

Gradually, the profile of Romania acquires new strengths, the country becoming, besides a source of migration, which it still is nowadays especially with regard to the skilled and highly skilled workforce, a country of destination - mainly for work purpose and especially a transit country for migrants from countries outside the European Union that choose the Balkan route, a corridor that, geographically, is adjacent to the Romanian territory.

From the statistical data on the website of the Romanian Border Police, there is a dynamic of illegal migration which confirms that the Romanian territory is perceived by the migrants as being almost exclusively just a segment of their more or less clandestine journey towards western Europe.

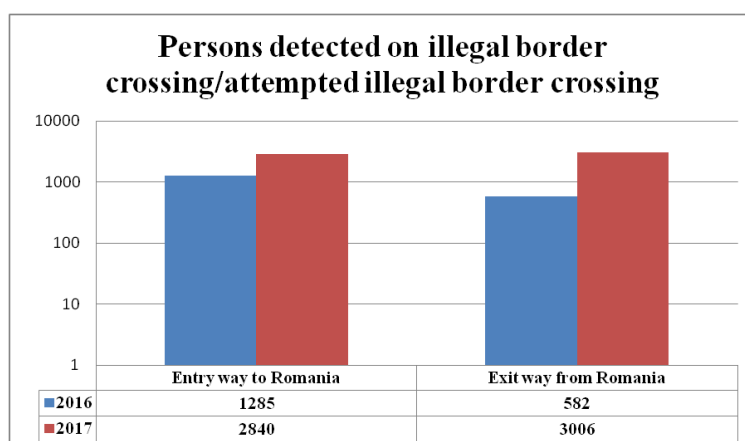
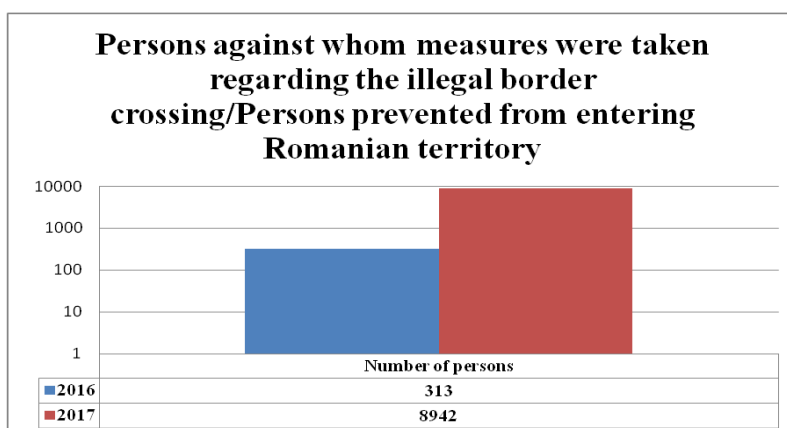
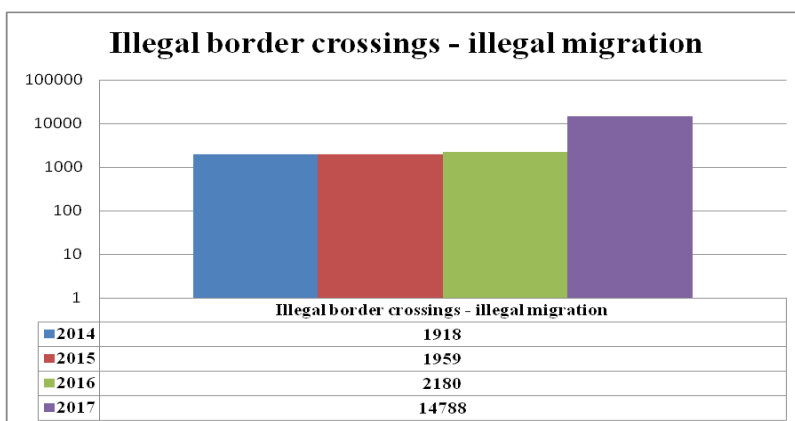


Figure 1.

2. Elements of Rational Choice Theory Compatible with the Analysis of Illegal Migration

The analysis model proposed by the rational choice theorists, assumes that the perpetrator chooses to commit a crime - in this case the illegal crossing of the state border - based on his own way of reporting, perceiving a risk and a potential reward as a result of the respective risk taking. Recent perspectives on rational choice theory focus on perceived effort compared to certain consequences of the event, including the likelihood and especially severity of a potential penalty (Cornish & Clarke 1986, 2003 in Paynich & Hill 2010, p. 107).

Modern theoreticians who study this type of analysis mechanisms identify a number of factors that influence the decision-making process of the individual, including temporal constraints, cognitive abilities and the type of information that the individual has access to at a given moment in time. From a criminological perspective, it is necessary that this process be subjected to analysis, taking into account the specificity of the crime. In this regard, we consider it necessary to mention the perspective that Liqun Cao (Cao, 2004, p.33) offers regarding the criminal involvement. Thus, the individual chooses, decides to get involved initially, so that he can continue and eventually stop the involvement.

As mentioned earlier, decision-making processes are influenced by multiple factors, so a person who is at high risk of committing a crime, but who does not have the opportunity to commit a crime, may obviously never do it, while another person with a low risk, but who does not lack the incentives and the opportunity can engage in committing a crime. As a consequence, in the light of the analysis model proposed by the rational choice theory, the perpetrator is seen as an individual who decides to commit an offense under particular conditions and circumstances.

In this context, we consider that the notion of "limited rationality" referred to by H. Simon (Paynich & Hill 2010, p. 108) comes as a complement to a potential analysis mechanism inspired by rational choice theory; according to the author, who studies the decision-making processes in the administrative organization, the aforementioned operational concept presumes that people approach the decision-making process based on imperfect and incomplete information. Given that it is impossible to make a completely rational decision with such information and, as well, temporary constraints and other types of obstacles arise, individuals no longer seek solutions when they identify an acceptable one, being satisfied with an imperfect decision that they think would have a chance to work.

3. Validation of the Analysis Mechanism

In an attempt to study the phenomenon of illegal migration from a criminological perspective, the concepts used by rational choice theorists were deconstructed into specific micro elements so that they would later be aggregated into an analysis mechanism that was used in a practical research.

This took the form of a cross-sectional study that involved interviewing a working sample of 40 migrants on the Romanian territory, who had illegally crossed the state border. The study participants were intended to be persons from different countries of origin, to know a language of international circulation so that it would not be necessary to involve an interpreter in the interviews, in order to avoid any obstacles in the communication, obstacles that might arise from the interpretation.

Regarding the techniques used in the research, we specify that a mixed technique was used that combined less formal elements with formal elements, the technique of the non guided interview was used, in order to progressively switch to the concentric type interview (Stănoiu, 1981).

The subjects were explained before starting the interview, that their confidentiality is assured, the data that the researcher collects are exclusively for the elaboration of a scientific paper, and the answers to the questions have no implication of legal nature and they do not in any way affect their legal situation. It was also brought to the attention of the migrants that, in such a context, there are no right or wrong answers.

The interviews revealed that the subjects knew that, by choosing to embark on a clandestine journey from the country of origin to western Europe, they would be exposed to risks, but none of them knew at the time of organizing the journey what those risks were, what risks they should assume when choosing to become an illegal migrant. The nature of the information they had at the time of taking the decision was relatively precarious, the decision-making process not involving many analytical aspects; the information was mainly focused on the segments of the trip, possible countries of transit and the final destination. We find it interesting that two of the subjects claimed that at the time of the decision to migrate illegally they did not know anything about the trip, but decided to join a group of members of their community, thinking that they could take advantage of the moment. Some have stated that the only sources of information on which they based their decision were traffickers and in some cases eventual posts on social networks made by fellow citizens already based in western or northern European countries.

The subjects were therefore in the situation of having the opportunity to act, they decided to take a risk that they did not know much about; making their choice based on incomplete and imperfect information, they were satisfied with a solution that at that time they believed was viable. Unfortunately, during the course of their journey, they discovered that the risk assumed, not necessarily that of a punishment of legal nature, was a much higher one than it was initially perceived. Thus, some interviewees realized that their life was in danger during the trip and wanted to revise their decision to leave the country of origin, but were constrained by the degree of family debt - to pay the traffickers they had to borrow large sums of money, loans from local loan sharks who, for the most part, were in the same organized crime network as the smugglers.

None of the subjects claimed that too much time had been spent on analyzing the information made available when he/she was put in the situation to make a decision regarding illegal migration.

The most common type of response was that, at the initial moment which involved the start of the necessary arrangements for the organization of a clandestine trip to Western Europe, it seemed the most appropriate decision.

4. Conclusions

The elements derived from the rational choice theory are compatible with the analysis of the phenomenon of illegal migration, the aforementioned theoretical framework proposes a valid analysis model. However, in the scientific approach, it is necessary to take into account the limitations that a theory has, be it normative, descriptive or integrative. In the elaboration of working hypotheses meant to be advanced within an applied scientific research of the phenomenon of illegal migration, we consider that, from a criminological point of view, it is desirable to have in mind the operational concepts presented in the present article

In order to propose a compensated analysis mechanism, we believe that, in the case of illegal migration, it is important for the researcher to also lean on elements of other criminological theories, because if the analysis is focused exclusively to the above mentioned mechanism, there is a risk that, in the end the individual (in this case the migrant) is perceived only as a person who, following a more or less questionable decision-making process, chooses to commit a crime, regardless of the social context (Lilly, Cullen & Ball, 2007, p.277), environmental factors, socio-economic situation in the country of origin and/or criminogenic risk factors. Such an

approach could even lead to criminal law policies that will ignore the social context of the person, being limited to a cause-effect type oversimplification and losing sight, to a certain extent, to what is really of interest in the legal paradigm, namely migrant smuggling networks, how they operate and the more or less known actors involved in them.

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*** <http://www.kofiannanfoundation.org/articles/migration-realism>

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