

LEGAL ASPECTS OF MIGRANTS SMUGGLING AT THE SEA BORDER BETWEEN HELLAS AND TURKEY

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Abstract

Organized crime (Note 1) has a global character and is one of the most serious threats in the modern societies for decades. This phenomenon because of the characteristics that govern modern societies and economies, namely globalization, transnational flows, reduction of distances due to the technology evolution has taken international dimensions. These evolutions help the development of international profitable illegal activities.

Organized Criminal Groups (OCG) are operating simultaneously in more than one countries internationalizing with that way crime, making difficult and painful its effective and comprehensive combat. Besides the international character of modern organized crime, an additional problem is the modernization of mode and methods of action that are used by criminal groups. In criminal phenomena that characterize our time is included illegal immigration. Illegal immigration is a social – political, and economic phenomenon that leads people to search a better quality of living in various places different of their origin place. Consequently the hope of these people was and is a profitable business for others.

Keywords: illegal immigration, United Nations (UN), Law Enforcement Agencies (LEA), organized crime, Organized Criminal Groups (OCG), Hellas, Turkey, sea borders, Hellenic Penal Code (HPC), Hellenic Coast Guard (HCG), Hellenic Police (HP)

Introduction

Migration is a phenomenon with specific causes, such as the widening of social and economic inequality, civil wars, climate changes, environmental disasters etc. Considering the fact that the European Union (EU) in general is consisted by Member States (MS) which in their majority are characterized by economic prosperity and political stability, can be understood the reasons for which EU is the major destination for every person who wishes to improve his/her life quality, looking forward in a better future. Important role in the selection of EU as migrants' final destination is also its proximity to Asia and Africa (Map 1 about here).

Hellas since the beginning of 1990s has become a host country for migrants and particularly appears to have the largest proportionally number of immigrants in the EU. The causes for Hellas conversion in a host country for migrants are based on the economic development of the country that had been achieved in the previous years as also to broader political and social developments that have taken place in Europe and in the area of the Balkan Peninsula in the previous years. Hellas in order to combat this phenomenon has taken a lot of legislative initiatives in a national level but also in an international level, participating in drafting and signing of international texts, which then are integrated into its national legal system.

In order to put an end to the migrants smuggling by land, sea and air, the United Nations (UN), decided to promote the cooperation and the exchange of information between States and to set the conditions in order to be taken the appropriate measures at regional,

national and international level, through a protocol supplementing the United Nations Convention against transnational organized crime and interpreted together with this.

With the law 3875/2010 (A´ 158) titled "Ratification and implementation of the United Nations Convention against transnational organized crime and its three protocols and relevant provisions", the Hellenic Parliament ratified the Convention against transnational organized crime, signed in Palermo (Italy) on 12-15 December 2000 and its three Protocols, including the Protocol against the smuggling of Migrants by land, sea and air.

The Convention provides the following:

Preventing and combating smuggling of migrants as well as the promotion of cooperation among Member Parties, while in the same time protects the migrants' rights.

Each State adopts legislative measures in order to establish as criminal offences when are committed intentionally and in order to be obtained, directly or indirectly, a financial or other material benefits, the migrants smuggling, the production, supply or possession of illegal travel documents, the participation and complicity in offences of migrants smuggling.

Also must respond expeditiously to a request from a partner State.

Each State must designate an authority to receive and to respond in requests for assistance, while is taking the appropriate measures providing to migrants adequate protection against violence that may be exercised against them either by persons or by groups. Parallel each State agrees to facilitate and to accept, without undue delay, the return of a person who is a citizen of it or has the right of permanent residence in its territory at the return time.

The Convention has been ratified by the majority of United Nations MS and within the framework of this are functioning partnerships in order to combat the problem.

The purpose of this brief study is to examine critically and chronologically the provisions which were formed by the Hellenic legal order since 2000, when the Hellenic State signed the Palermo Convention, until 2010 when was incorporated into the national legal order, in order to combat the phenomenon of migrants smuggling. At the same time will be examined the situation at the sea borders between Hellas and Turkey during the period 2006-2012, period where are observed movements of migration flows from sea borders at land borders and lately from August 2012 till now from land borders to sea borders for specific reasons which will also be examined (Map 2 about here).

For the development of this concise study will be exploited the existing legislative framework, namely laws, introductory reports, minutes of the responsible Standing Committee on Public Administration, Public Order and Justice, reports on the laws issued by the A´ Scientific Division of the Hellenic Parliament as well as statistics from the competent Directorate of the Hellenic Coast Guard (HCG) Headquarters. Finally this brief study will be completed by citing the conclusions arising from its development.

Provisions concerning combating migrants smuggling in the Hellenic legal order

Law 1975/1991 (A´ 184) was the first act containing provisions on the entry and stay of aliens in Hellas. This law did not respond to the reality that has been set up, with result the practice of the Hellenic public administration officials to deviate from its provisions. At the same time while at the time of its drafting was visible mainly the migratory pressures in the EU from the East, had not been foreseen by the Hellenic Government that Hellas would become very soon from traditional migrant sending State to a host State of influx migration flows.

The weakness concerning the effective border guarding, the inelasticity and the legislation obsolete, led to the creation of an illegal growing population of residents and workers in Hellas. Despite their contribution to the national economy, many of these persons

remained at the margins of the Hellenic society in conditions below of them that are dictated by the human dignity and thereby often to be led in criminal behaviors.

In 1997 was established a initiative of setting a system concerning the registration and incorporation of illegal aliens population through the Presidential Decrees (PD) 358 and 359/1997 (A' 240) according to which was established a parallel with the predictable in the law 1975/1991 title of alien legal residence and work in Hellas, known as "green card". But problems in the Hellenic public administration concerning the coordination of the services as also the ambiguity regarding the advantages arising from its possession, led a large number of aliens to the exclusion of the granting process.

With the law 2910/2001 (A' 91), attempted to be overcome the shortcomings of law 1975/1991. But this law failed. The initial purpose for aliens' registration and legalization by granting provisional authorization was not completed as the whole process was extremely bureaucratic. The complex and the bureaucratic structure of the law, the lack of a clear purpose and mainly the deficient treatment of a large number of aliens' special cases, created the need for repeated legislative interventions at modification and addition level, which, however, did not produce the desired results in solving problems regarding its implementation.

1.1. Law 3386/2005 (A' 212), «Entry, residence and social integration of third-country nationals in the Hellenic Territory»

With law 3386/2005 (Note 2) attempted try to be filled the blanks and the omissions which were identified in the previous decade, but also to be undertaken a strategic initiative on the management of migration flows, taking under consideration the developments in the EU (Note 3) but also utilizing the experience gained from the implementation of law 2910/2001, establishing for first time provisions for the integration of migrants into the Hellenic society.

The main axes of the law on the establishment of a modern, long-term and socially equitable migration policy were and are the following:

A.-The rational planning concerning migrants' entry into the Hellenic territory, based on specific qualities and taking into consideration the data and the needs of Hellenic economic and social life.

B.-The avoidance of casual and uncontrolled regime changes, whereby legally installed the alien in Hellas.

C.-The ensuring of aliens work conditions who come to Hellas in order to work in conditions befitting to a modern constitutional State.

D.-The introduction of a new modern migrant's social integration system.

E.-The establishment of the proper guarantees concerning the effective enforcement of Hellenic legal order rules in order to be avoided uncontrolled phenomena of aliens entry and exit in the State.

F.-The ensuring of appropriate conditions for unhindered exercise of any kind of aliens rights, particularly those relating to the free development of their personality, their free participation in the Hellenic economic and social life under social justice, respect of their specific features mainly of them which derive from their origin.

In parallel with this specific law attempted to be established a management system as possible less bureaucratic, functional, beneficial for the Hellenic economy and mainly safe for economic migrants' rights in Hellas, introducing a number of innovations compared with the existing legislative framework, the most important of which are:

A.-Creation of an inter ministerial body concerning the coordination of migration policy.

B.- Residence and work permission integration in one act issued by the General Secretary of the region.

C.-Streamlining of aliens repeal system for work in Hellas, by the empowering and the effective activation of Regional Immigration Committees, which will determine the needs of the workforce at the regional level and in detail for every prefecture, in accordance with the supply and demand of labor per categories specialization ratings and always in accordance with the existing relevant national workforce.

D.- Allocated residence permission types rationalization and reduction of the respective categories. Completely definition of cases in which are granted a residence permission on humanitarian grounds in order to be avoided the abuse.

E.-Provision of basic principles concerning the acquiring of the status of long-term resident third country national in Hellas and the determination of criteria for its granting.

F.- Basic principles forecasting concerning the social integration of aliens in the Hellenic society with the assistance of specific criteria.

Z.- Clear preconditions establishment concerning the facilitating family reunification.

H.- Independent economic activity exercise facilitating and realization of large investments on granting residence permission side.

I.- Controls intensification in the direction of restricting the entry and residence of illegal aliens in Hellas.

I.- National legislation completely and timely harmonization with the existing European institutional framework and the trends that are being developing within the EU.

The faster issuing of the relative acts and the valid information of each interested party were going to be achieved through the modification of regions organizations, the electronic interconnection of the engaged stakeholders for the regions organizational restructuring, the organization of reception services and information providing concerning requests for the granting of residence permission.

The law is consisted by 20 chapters and 98 articles.

Chapter A' contains definitions and the scope of the law.

Chapter B' contains regulations for border crossings police control.

Chapter C' foresees the general conditions concerning entry and residence of third-country nationals.

Chapter D' contains the horizontal provisions referred to the general conditions for granting residence permission.

Chapter E' refers to all types of residence permission for work.

Chapter F' refers to residence permission for exercising an independent economic activity and investment purposes.

Chapter G' refers to the granting and renewal of all residence permission types granted for specific reasons.

Chapter H' refers to residence permission for exceptional reasons.

Chapter I' includes a package of provisions relating to the granting and renewal of residence permission to victims of trafficking in human beings.

Chapters J' and K' refer to residence permission for family reunification as also and the right of third-country nationals' residence who are family members of a Hellenic or EU citizen.

With Chapter L' were introduced for first time in the Hellenic legislation provisions concerning the integration of third-country nationals in the Hellenic society.

With Chapter M' was introduced for first time a set of arrangements concerning the procedures of acquisition of long-term resident status.

Chapter N' refers to a few days residence.

Chapter O' describes the rights and the obligations of third country nationals.

Chapter P' refers to special restrictions, the revocation of residence permission and to the deportations.

Chapter Q' refers to general obligations and their respective penalties for infringements in case of their violation.

Chapter R' refers to functional issues.

Chapter S' and T' refer to transitional and final provisions.

1.2. Law 3772/2009 (A' 112), «Reforms in the organization of the forensic medicine service, in drug users therapeutic treatment and other provisions»

With article 48 of the law 3689/2009 were made amendments – additions to article 76, 87 and 88 of Law 3386/2005 making the penalties for those who facilitate the entry in the Hellenic territory or the exit from it of a third country national without being subjected to the control which is foreseen, more stringent. Also were made stricter the sanctions in masters or captains of a vessel or of floating boats or of an aircraft and to drivers of any kind of transportation means carrying from abroad in Hellas nationals of third countries who do not have the right of entry to the Hellenic territory or to whom has been refused the entry for any reason, as well as to those who receive them from the entry points, from external or internal borders, in order to promote them within the country or in the territory of EU MS or in a third country or facilitate their transfer or provide them accommodation for concealment.

Also in the same article is foreseen that property which consists product of criminal activity of this article, as well as of paragraphs 5, 6 and 8 of article 87 of Law 3386/2005, or acquired in any manner from such criminal activity or property used in whole or in part, for the aforementioned criminal activity is seized and if there is no relieve case to be rendered to the owner according to articles 310 paragraph 2, «Decision that should not be done accuse etc.» and 373 of the Criminal Penal Procedure (CPP) «Costs. Fate of the things seized», is confiscated mandatory with the conviction. The confiscation is enforced even if the property belongs to third, in case he/she was privy to criminal activity at the time of property acquisition. In case that the property or the product in the previous subparagraph exceed four thousand (4.000) Euros and is not able to be confiscated, are seized and confiscated under the terms of the preceding subparagraph property assets of equal value to that of the aforementioned property or product.

Finally a significant prediction is the anticipation that the provisions of this article and of paragraphs 5, 6 and 8 of article 87 shall be enforced and when the predictable in them offences were committed in abroad by national or alien even if these are not punishable by the laws of the country in which they were committed.

Predictions in the United Nations Convention against Transnational Organized Crime

Law 3875/2010 (A' 158), «Ratification and implementation of United Nations Convention against Transnational Organized Crime and its three protocols and relative provisions»

The purpose of the United Nations Convention against Transnational Organized Crime organized cross-border crime as referred in article 1 is to promote cooperation to prevent and combat transnational organized crime more effectively and in particular as far as concerns this study the combating of migrants smuggling.

the Hellenic legal order has been criminalized the participation in an organized criminal group with law 2882/2001 (A' 141), having taken into consideration during its drafting and the provisions of Palermo Convention.

The Convention has entrenched its scope in the transnational organized crime but however in any case and according to articles 3 paragraph 1(a) and 34 paragraph 2 the offences established according to articles 5, 6, 8 and 23 of the Convention (participation in organized criminal group, legalization of crime products, corruption and justice obstruction), must be established in the domestic law of each State Party independently of their transnational nature or the involvement of organized criminal group, with the exception of

article 5 (participation in an organized criminal group) as far it requires the involvement of organized criminal group.

In this way, Palermo Convention composes a comprehensive legal basis for the promotion of cooperation among Member Parties to prevent and combat transnational organized crime.

The purpose of the Protocol that bears the title «Protocol against the smuggling of migrants by Land, Sea and Air supplementing the United Nations Convention against transnational organized crime», is to prevent and to combat smuggling of migrants when is involved organized criminal group and the promotion of cooperation among Member Parties in order these purposes to be fulfilled while are protected and the rights of smuggled migrants. More specifically:

In the article 1 is fixed that the Protocol supplements the United Nations Convention against Transnational Organized Crime and it shall be interpreted together with the Convention. The provisions of the Convention shall apply *mutatis mutandis* to the Protocol, unless otherwise provided in the Protocol.

In article 2 is determined that purpose of the Protocol is to prevent and combat the smuggling of migrants, as well as among States Parties to that end while protecting the rights of smuggled migrants.

For the purposes of the Protocol is referred in article 3 the containing of individual terms, such as "smuggling of migrants", which mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident, "Illegal entry", "Fraudulent travel or identity card" and "Vessel".

Concerning the meaning of "Vessel", it should be noted that article 1 of the Private Maritime Law Code (K.I.N.D.) [law 3816/1958 (A' 32)] and article 3 of the Public Maritime Law Code (K.D.N.D.) [Legislative Decree 187/1973 (A' 261)] delimit the meaning. Also article 88 of Law 3386/2005 (A' 212) is reefered to the masters or captains of a vessel, floating craft or aircraft and to drivers of any kind of transportation mean. The Protocol includes in the vessel concept and the seaplanes.

The Hellenic legislation requires for the vessel concept destination and not only movement ability at the sea, that's why the seaplanes are not considered as vessels since they have the ability to sail into the sea during the alighting and taking off, but are destined to move in the air. For them the motion at sea is helpful only for flight (Note 4). For the purpose of the Protocol and according to article 4 (Scope of application) in cases of migrants smuggling, since the crimes are transnational in nature and involve an organized criminal group in the concept of the vessel are included and seaplanes.

In article 4 is defined the application scope of the Protocol. More specifically the Protocol shall apply, except as otherwise stated in it, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of the Protocol, where the offences are transnational in nature and involve an organized criminal group.

In article 5 is stated that migrants shall not become liable to criminal prosecution under the Protocol, for the fact of having been the object of conduct set forth in article 6.

In article 6 is specified that each State Party shall adopt such legislative and other measures as may be necessary to be established as criminal offences, when committed intentionally and in order to be obtain, directly or indirectly, a financial or other material benefit:

- (a) The smuggling of migrants;
- (b) When committed for the purpose of enabling the smuggling of migrants:
 - (i) Producing a fraudulent travel or identity document;
 - (ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) as mentioned above or any other illegal means.

In the same article is determined that each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 as mentioned above.

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of the specific article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of the article.

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of the article each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of the article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of the article, circumstances:

(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) That entails inhuman or degrading treatment, including for exploitation, of such migrants.

Finally is determined that nothing in the Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

In the Hellenic criminal law all these behaviors are already criminal offences and are combated with strict penalties. In particular migrants smuggling as this is provided in the Protocol [article 6 paragraph 1 (a)] is regulated in the Hellenic legislation by Chapter IZ «General obligations – Sanctions» of law 3386/2005.

The unlawful behaviors referred in paragraph 1 (b) (i and ii) are covered by article 216 of Hellenic Penal Code (HPC) (forgery), 220 (snatching away false attestation), 242 (false certificate, distortion, etc.), in conjunction with article 187 paragraph 1 of the same Code.

Also, if the false travel document or identity card was issued with bribery or coercion are implemented the provisions of the HPC as articles 235, 236, 333, 386, 372, 374. More specifically, article 216 paragraph 1 (forgery) punishes the making of false document and the distortion of the document.

With the second subparagraph of paragraph 1 the use of the document by the same person is considered as an aggravating circumstance. With paragraph 2 is punishable and whoever knowingly makes use of counterfeit or adulterated document.

Additionally according to subparagraph b of paragraph 3, with increased penalty is punished the perpetrator who commits forgery by profession or by habit and the overall benefit or the overall damage exceeding 15.000 Euros. With article 242 of the HPC is punishable the perpetrator if is a civil servant and responsible for issuing the certificate and certifies false facts in it.

Also is punished heavier if seeks committing of the above crimes in felony decree (216, 242) and establish or join as a member in a criminal organized group, in accordance with the conditions provided in article 187 of the HPC. Also in the Hellenic legislation and more specifically in article 87 paragraph 7 and 8 of law 3386/2005 is punished anyone who illegally possesses or uses genuine passport or another travel document of another person who also hold a passport or other travel document of another person or refuses to deliver it to the

relevant service as also anyone else who holds or uses a fake passport or another travel document.

Also is punished the responsible of travel or immigration office or anyone else who submit on behalf of a third person in the competent authority documents for issuing travel document with particulars that do not correspond to the person identity, as well as the one on whom behalf are submitted the supporting documents.

Concerning the criminalization of behaviors that are predicted in article 6 paragraph 1 (c), Hellenic legislation also punishes these unfair actions. More specifically, the granting of residence facilitation in a person who has entered in the country illegally is predicted in articles 84-87 of Law 3386/2005, in which:

a) are determined the cases in which public services, public legal persons, local self governments and services in the public sector are obliged not to offer their services to third-country nationals, as well as the penalties that are implemented in case of their violation,

b) are foreseen the obligations of notaries during the preparation of notaries acts when parties or participants in any way in these are third-country nationals as well as the penalties that are implemented in case of their violation,

c) are foreseen the obligations of employers who employ third-country nationals as well as the penalties that are implemented in case of their violation,

d) are foreseen the obligations provided for officials and other individuals as well as the penalties that are implemented in case of their violation, while there is explicit provision for at least 1 month imprisonment and a financial penalty of at least 5.000 Euros for anyone who facilitates illegal staying of third-country national (article 87 paragraph 6) or at least 2 years imprisonment, if the perpetrator acted by speculation.

Concerning the criminalization of behaviors referred in article 6 paragraph 2 (a) (attack), Hellenic legislation punishes these unjust actions with the general provisions of the HPC on attempted and more specifically article 42. Regarding the criminalization of behaviors referred in article 6 paragraph 2 (b) (participation), Hellenic legislation punishes the unjust actions with the general provisions of the HPC on participation and more specifically articles 45, 46, 47.

Concerning the criminalization of behaviors referred in article 6 paragraph 2 (c) (organization or guidance), Protocol, as referred in article 4 is implemented when is involved organized criminal group. Beyond the general provisions of the HPC on participation, the concepts of organization and directing are punishable in accordance with the provisions in the UN convention by article 187 of HPC when are referring to felonies commitment.

With article 87 paragraph 5 of law 3386/2005 is covered article 6 paragraph 2 (c) of the Protocol for the relative felonies.

As far as concerns the criminalization of behaviors referred in article 6 paragraph 3 (a) of the Protocol on the aggravating circumstances of the offences referred in paragraphs 1 and 2 of article 6 of the Protocol and more specifically those circumstances which endanger or may endanger the life or safety of the migrants is enforced the provision of article 88 paragraph 1 (c) and (d) of law 3386/2005 relating to cases that arose risk for a person or death occurred during migrants transportation. Also are in force and the relative provisions of HPC general part as for instance article 306 (exposure).

Regarding the criminalization of behaviors referred in article 6 paragraph 3 (b) on the aggravating circumstances of the offences referred in paragraphs 1 and 2 of article 6 of the Protocol and in particular those circumstances involving inhuman or degrading migrants treatment, including the one that has purpose their exploitation, the provisions of articles 323 A paragraph 1 of the HPC ("human being trafficking", the heavy bodily harm of the victim is an aggravating situation in accordance with paragraph 4 (d), article 351 paragraph 4 (d) of the HPC "pimping", where is an aggravating circumstance if the action is related to illegal entry,

residence or the victims exit from the country, in the event of death is imposed life imprisonment according to paragraph 5 of the above article).

Based on the above was not necessary the anticipation of new criminal sanctions for behaviors dealing that described in article 6 of the Protocol.

Articles 7, 8 and 9 of the Protocol refer on cooperation and in taking measures against migrants smuggling by the sea. In article 8 are determined the measures against migrants smuggling by the sea and more specifically the adoption of vessel control under Hellenic flag, when there are suspicious of carrying illegal immigrants and the possibility of vessel control by the Hellenic authorities suspected for illegal immigrants transportation.

Concerning the mentioned in article 8, paragraph 6 of the Protocol: «Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary- General to all other States Parties within one month of the designation» in Hellas responsible competent authority is the Ministry of Aegean and Shipping via HCG and more specifically the Directorate of Sea Borders Protection.

Also with the Regulation (EC) 2007/2004 (26-10-2004, L 349/25-11-2004) has been established the European Agency for the management of operational cooperation at the external borders (FRONTEX) (Note 5). The European Agency for the management of operational cooperation at the external borders (FRONTEX) coordinates the operational cooperation between MS in the field of external borders management, assist MS in circumstances requiring increased technical and operational assistance at external borders and strengthens border security by ensuring the coordination of MS during the implementation of community measures relating to the external borders management. Additionally in combating to the phenomenon of illegal immigration contributes the European Police Office (Europol) and the European Union's Judicial Cooperation Unit (Eurojust) (Note 6). Hellas has common external sea and land borders with EU.

In article 9 of the Protocol are defined the protection clauses in case that the Hellenic competent authorities shall take measures in accordance with article 8 of the Protocol.

Article 10 refers to the cooperation of the States Parties for exchanging information on migration issues. As far as concerns Hellas competent authority for the collection and analysis of information provided in article 10 of the Protocol is the Crime Analysis Department of Public Security Division of Hellenic Police (HP) Headquarters. This department is responsible for the preparation of the report on the situation of organized crime in Hellas. In the above authority and on the basis of what has been referred in article 13 of the Protocol is entrusted and the travel documents checking.

The provisions in article 11, paragraphs 1, 2, 3 and 4 of the Protocol are adequately covered by the Hellenic legislation and in particular by the article 88 of the law 3386/2005, which refers to carriers obligations. Concerning measures referred in paragraph 5 of article 11 of the Protocol, article 8 paragraph 2 of law 3386/2005 is supplemented with subparagraph which provides the denial of entry or revocation of visas in person who in any way is involved in migrant smuggling by organized groups in accordance with article 6 of the Protocol (part of this article has been amended by article 48 of law 3689/2009).

In article 76 paragraph 1 (a) of law 3386/2005 is already predicted the administrative deportation of an alien who has been convicted finality, regardless of the penalty, for crimes involving inter alia migrants promotion, facilitating of transportation or promotion or providing accommodation and in subparagraph b and if «he/she has violated the provisions of this law».

In articles 12-13 are predicted the obligation of States Parties to take the necessary measures for safety, control and the validity of travel documents and ID cards.

Concerning article 14 of the Protocol, Hellas has undertaken initiatives for officials/executives training of relevant enforcement immigration agencies basically of the Ministry of Public Order and Citizen Protection (HP), Aegean and Shipping (HCG) for illegal immigration items with trainings in Hellenic Multinational Peace Support Training Center (P.K.E.E.Y.E.) in Kilkis (Hellas), and with the organization of seminars – training in Hellas through European Academy (CEPOL) in order to be transferred experience and know-how.

Regarding the provided in article 15 of the Protocol, in article 66 of law 3386/2005 and more generally in chapter IB concerning migrants social integration, in the integrated action programme, in the subprograms referred in paragraph 3 of article 66 and concerns the sensitization of public opinion, is predicted the public information on the dangers of illegal immigration by organized criminal groups.

Also in the article 2 of the PD 188/2002 (A' 175), «Establishment of Migration Policy Institute», which relates to the purpose of the migration policy institute, at the sub paragraph c is referred as purpose and «the design and implementation of communication policy for raising awareness of civil society on immigration».

Article 16 provides obligation for States Parties to adopt measures for the protection of persons who are victims of migrants smuggling, in accordance with article 6 of the Protocol.

Hellas with law 3386/2005 capitalizing previous legislative experience and practice and establishing for first time provisions for the social integration of migrants into Hellenic society, has established a management system on migration policy, which seems that can be completed, extending the implementation of the protective provisions for victims on trafficking and persons who were the subject of migrants smuggling. For this purpose is redefined the title of the legal meaning of the term "trafficking victims" (article 1i), and "smuggling migrants victim" (Article 1 k) and adopted very important measures for staying and working legally in Hellas of persons designated on the basis of the above concepts.

Specifically is upgraded the already envisaged granting and renewal of residence permission to aliens, nationals of third countries who entered illegally in Hellas in accordance with the provisions of article 14 of the European Council Convention on the action against trafficking in human beings, whether there were victims of trafficking or migrants smuggling (articles 46-52 of law 3386/2005), if their residence is judged as necessary either because of their personal circumstances, or for purposes of cooperation with the competent authorities (articles 46-52 of law 3386/2005), is granting the possibility of a residence limited power permission, is taking special care for unaccompanied minors, is granted a reflection period of three months, extendable for minors during which cannot be deported and cannot be enforced deportation decisions and is provided protection and assistance, while at the end already exists and the general possibility of granting and renewal of residence permission for humanitarian reasons under article 44 paragraph 1 (bc) and 4 of law 3386/2005.

Concerning articles 17 and 18 of the Protocol, Hellas and its competent authorities have concluded a number of agreements on combating illegal immigration. Hellas is not a place of origin but destination place or a migrant transit and therefore has signed relevant conventions and cooperates with several countries, notably neighboring in readmission and return issues (Note 7).

Migrants return issues are regulated by special conventions with prejudice of the relative arrangements for refugees and political asylum. In this case are implemented with prejudice to the provisions relating to the victims protection and assistance, the provisions for aliens deportation who violated the provisions of the law (articles 76 and next of the law. 3386/2005) and entered illegally in Hellas.

With articles 19-20 are regulated items like «saving clause», «settlement of disputes», «signature, ratification, acceptance, approval and accession», «entry into force», «amendment», «denunciation» and «depository and languages».

About the reservation provided in article 20, paragraph 3 of the Protocol (settlement of disputes) concerning the containing of paragraph 2 «Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International

Court of Justice by request in accordance with the Statute of the Court» is not a known process in the Hellenic legal order. The Hellenic State made use of paragraph 3 of article 20, and indicates that is not bounded by paragraph 2 of this article.

3. The situation at the sea border between Hellas and Turkey during the period 2006-2012

The phenomenon of illegal immigration which is a problem for the most MS is strongly remarked in Hellas, given its geographical location between two continents, the peculiarity of its borders and the proximity of the Turkey (Note 8), making Hellas the focal point for migrants smuggling. Therefore is imperative need for effective sea borders surveillance.

The most important role in guarding the Hellenic but also European sea borders plays the HCG (Note 9), the Hellenic institutional competent authority for policing the sea space in Hellas. The HCG is called with its executives, the equipment and the means having at its disposal to implement both national and European policies that have been developed and are deployed concerning the phenomenon of illegal immigration. But the work is required to implement is very difficult, due to the characteristics of the Hellenic geopolitical reality as mentioned before (Note 10) (Maps 1, 3 and 4 about here).

Hellas due to its strategic position it's Law Enforcement Agencies (LEAs) and more specifically HP and HCG face on a daily basis dozens of migrants smuggling incidents, mainly from its southern and eastern sea borders. Many of these incidents are evolved in search and rescue operations while most illegal migrants after advice provided by the facilitators when they perceive HCG floating patrol boats usually sink the inflatable rarer boats carrying them or jump from other boats in the sea in order to be treated as individuals that they need rescue (Note 11). Thus from a point and beyond operations are characterized not as deterrents but as search and rescue.

During the period 2010 to July 2012 was remarked a shifting to flows from sea to land borders in comparison with the situation in the past (Figures 1 and 2 about here). This is due to the following reasons:

A.- The systematic surveillance of sea borders within the framework of "Poseidon" (Maps 3 and 4 about here).

B.-In penalties toughening which are imposed on facilitators of illegal migrants in accordance with article 48 of law 3689/2009.

C.- The definition of Dikeliou port in Turkey as a readmission port.

D.- The Liberal policy that was followed by the Turkey (Visa) and the extension of Turkish Airlines in Africa.

E.-The accessibility of land borders in relation to sea borders.

From August 2012 until today there is remarked a shifting of migratory flows from the land borders between Hellas and Turkey to the sea borders between the two countries. This is due to the following reasons:

A.-The strengthen thing of the surveillance measures at the land borders with the assistance of forces available of FRONTEX and the construction of the fence (Note 12).

B.-The deterrent role played by the reception migrants' centers at the border.

C.- The deterioration of the situation in Syria.

D.- The continuous influx of aliens in Turkey.

E.- The inability of aliens staying for a long time on the islands of the Eastern Aegean.

F- The fact that relative Protocol on immigrants' readmission is not implemented by Turkey.

Effects of the above are the following:

A.- Large concentration of immigrants on Turkey coast.

B.- The reactivation of organized criminal networks for facilitating migrants to the Hellenic islands closest to the Turkish coastline, namely Simi, Agathonisi, Farmakonisi, Samos and Lesvos.

C.- Incidents escalating, the majority of which turn into search and rescue incidents.

The response measures taken by the HCG in order to be combated the escalating flows at Eastern Aegean islands are:

A.- Intensified of sea areas and coastline surveillance- patrol.

B.- Strengthening port police authorities at the border with patrol boats and helicopters.

C.- Intensifying cooperation with the HP for aliens identification – debriefing.

D.-A request for assistance was sent to FRONTEX.

E.- Extension of operation «Poseidon-sea borders» by FRONTEX and reinforcement with additional operational resources and experts of EU MS.

F.-Actions to the Turkish Coast Guard with purpose to be prevented the illegal entry of migrants from Turkey.

Z.- Cooperation interdisciplinary group establishment between HCG, HP, Hellenic National Defense General Staff, Navy and Hellenic Intelligence Service.

Estimation concerning the evolution of this phenomenon is the following:

A.-Instability prolonging in Pakistan, Iraq, Afghanistan and in the countries at Middle East and at North Africa.

B.- Maintenance of high migratory pressures in the Hellenic east sea and land frontiers.

C.-Increase of incidents concerning illegal exit from the shores of Western Hellas and from the area of Peloponnese (Map 4 and Figures 1 and 2 about here).

Conclusion

Organized crime and more specifically the migrants smuggling dimension, preoccupied and occupies the whole of the international community, as it constitutes one of the most serious threats facing modern States, both in national and international level as members of the international community.

The analysis revealed that most of the issues that had been raised by the Convention on the migrants smuggling have been covered by the Hellenic legal texts.

Undoubtedly the international police cooperation is the most important factor in combating illegal immigration, which is one of the most serious forms of criminal activity, trader people's hopes for a better future. For its combating have been established bilateral and multilateral agreements between States, new methods of investigations and international police cooperation.

Police cooperation had take all the necessary legal measures in order to combat the illegal immigration phenomenon, while the participation of LEAs with their executives in International and European organizations responsible for fighting shows its willingness to combat this phenomenon at the maximum extent possible.

Hellas must through the proper foreign policy, to seek the combating of illegal immigration general problem or in bilateral-interstate level, or mainly within international bodies (UN, EU, OSCE). It is obvious that great importance for combating of this specific

phenomenon plays the lobbying to Turkey by EU in order to be implemented the agreement that has been signed between Hellas and Turkey on the readmission of illegal immigrants entering to EU via Hellas.

At European level, Hellas should continue, as does to participate actively in European organizations and initiatives (Frontex, Europol, Eurojust) in order to reclaim in the best way the possibilities provided for more effective guarding and surveillance of sea borders with the help of European partners, either by absorption of Community funds or either by seeking to make the MS communicants and co managers of the problem facing at its east sea borders with migrants smuggling, something which is achieved by the presence of border guards from other MS in Hellas via FRONTEX. These border guards become partakers of the situation on the Hellenic border with Turkey, carrying their experiences in their countries. In addition their presence confirms the Hellenic borders as EU borders with easily understandable consequences vis-à-vis Hellenic relations with Turkey.

At the same time must be continued the effort of sea borders armoring at national level, in the context of a more comprehensive combating of this phenomenon as well as the fight against trafficking and other unlawful actions and activities in close co-operation with the Armed Forces and with the HP. The safekeeping of sea borders concerns over migrants smuggling, maritime terrorism, critical infrastructure protection, mass destruction weapons, organized crime, etc. namely illegal activities affecting national security.

Effective control of sea borders is a challenge and requires a multi-layered effort both at European level and at national level while the two policies need to act complementarily.

MS cannot give solutions by themselves to this global phenomenon. International initiatives are needed which will in any case take under consideration the legal texts for the protection of human rights.

The design of effective migration policies in time in conjunction with safe guard – border surveillance might help the reduce of illegal migrants number trying to enter in the EU but as the phenomenon is ought to socio-economic causes, EU must first and foremost to combat this at the region in which is born. Financial support, infrastructure building, expertise provision etc., or else the active economic EU foreign policy is possible to yield more results in contrast with the intensity of surveillance measures and guarding the sea borders that in final analysis are police measures.

Proposed actions for combating illegal immigration:

- a.- Keeping of surveillance and operational readiness at a high level.
- b.- Effectively protection of EU Southeast sea borders jointly and in cooperation with the rest of the MS and the relevant European organizations.
- c.- Operation of reception and accommodation centers at the Eastern Aegean islands.
- d.- Implementation of Readmission Protocol with the Turkey.
- e.- Further strengthen of interdisciplinary cooperation between the Hellenic LEAs particularly with respect on identifying smaller vessels and the dismantling of organized criminal networks smuggling migrants.
- f.- Implementation of the National Border Monitoring and Control Coordination Center (NBMCC) [Law 4058/2012 (A' 63)] in order to be coordinated the cooperation of the competent national authorities at the external border surveillance and the upgrade of operational cooperation with the rest of the MS and the FRONTEX.

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Notes

Note 1. Korontzis, T. (2012). The meaning of organized crime in the Hellenic and in the International legal order, *Limeniki Rota*, issue 10, July – August- September 2012, p.p. 27-29 (in Hellenic).

Note 2. For this law see the relative report of the Hellenic Ombudsman (Independent Authority), «Remarks to Interior Minister on the law elaborated draft concerning the entry, residence and social integration of third country nationals in the Hellenic territory» available on the web pages <http://www.synigoros.gr/?i=foreigner.el.parem vaseis-stp.49885> and http://www.synigoros.gr/resources/meta_paremv-02.pdf (in Hellenic).

Note 3. Korontzis, T. (2010). *Maritime borders surveillance – New European Perspectives*. Summary of the aforementioned Atomic Thesis which was elaborated in the Hellenic National Defense College (SETHA) in the academic year 2009-2010 was posted on the website of the above mentioned College <http://www.setha.mil.gr/main.php?action=diatribes> on 28/04/2010 (in Hellenic).

Note 4. Kiantou – Pampouki A. (1989). *Maritime law*, Sakkoulas, Thesaloniki, 1989 (in Hellenic). p.25.

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Note 6. Korontzis, T. (2011). European Police Office: EUROPOL, *Ethnikes Epalxeis*, issue 97, July – August – September 2011, p.p. 50-51 (in Hellenic), Korontzis, T. (2012). *European Union criminal policy and Joint Investigation Teams. The case of Hellas*, International Journal of Asian Social Science, Vol. 2, issue 12, December 2012, p.p. 2237-2250 and Korontzis, T. (2013). *Competencies and duties of International and European Organizations in combating of transnational organized crime. Evaluative approach*, Dioikitiki Enimerosi (quarterly journal of administrative inspection), issue 63, January – February- March 2013, p.p. 4-20 (in Hellenic).

Note 7. See laws 2926/2001 (A' 139), 3030/2002 (A' 163), 3540/2007 (A' 46), N. 3543/2007 (A' 60) [in Hellenic].

Note 8. For Modus Operandi see Korontzis, T. (2012). *The contribution of EUROPOL and FRONTEX in combating the phenomenon of illegal immigration in Hellas* Review of European Studies, Vol. 4, issue 1, March. 2012, p.p. 188-202, (doi:10.5539/res.v4n1p188).

Note 9. Korontzis, T. (2012). *The role of the Hellenic Coast Guard in the Hellenic internal security and in combating the phenomenon of organized crime*, International Review of Social Sciences and Humanities, Vol. 3, issue 1, April 2012, p.p. 210-227.

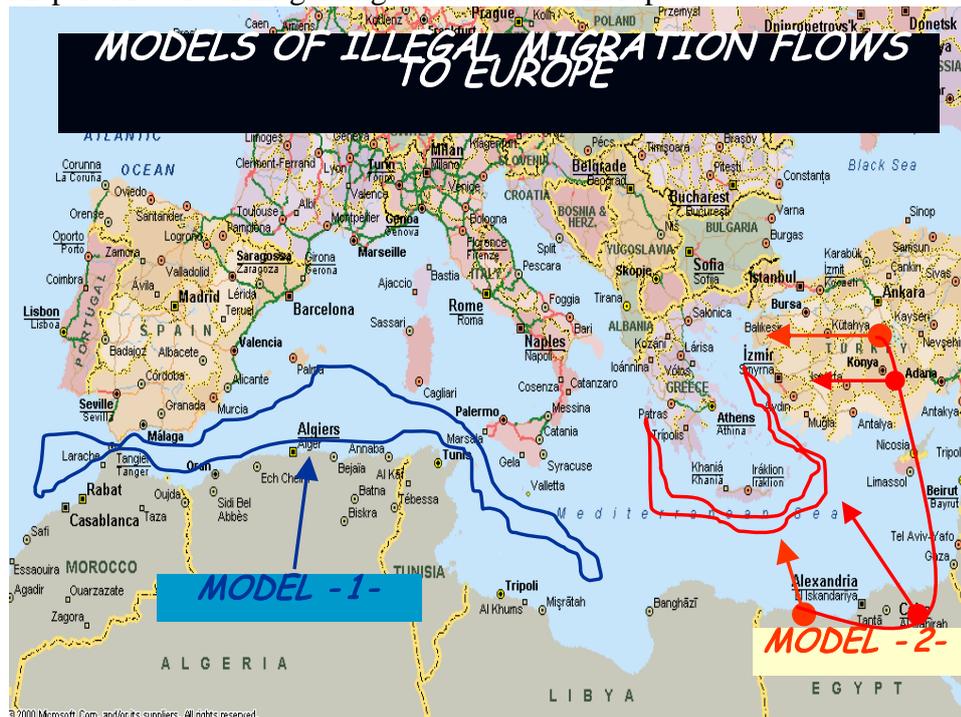
Note 10. Korontzis, T. (2012). *The contribution of EUROPOL and FRONTEX in combating the phenomenon of illegal immigration in Hellas*, op.cit..

Note 11. Korontzis, T. (2012). *The competence of Hellas on search and rescue items in the Aegean area*, Review of European Studies, Vol. 4, issue 2, June 2012, p.p. 89-110, (doi:10.5539/res.v4n2p89).

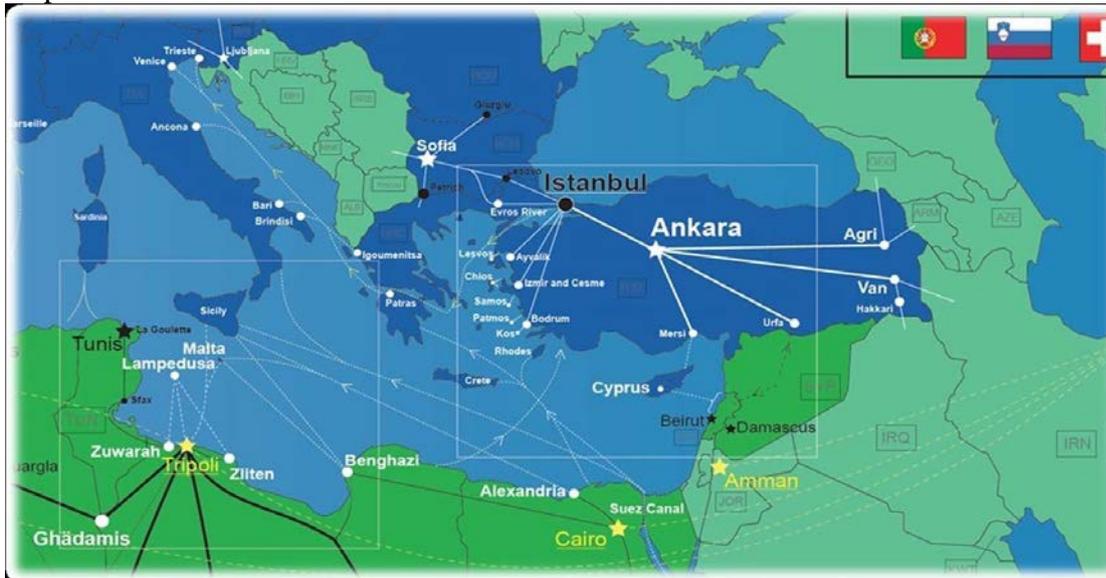
Note 12. Korontzis, T. (2012). *The European policies for illegal immigration via EUROPOL and FRONTEX in Hellas*, op.cit..

MAPS

Map 1: Models of illegal migration flows to Europe

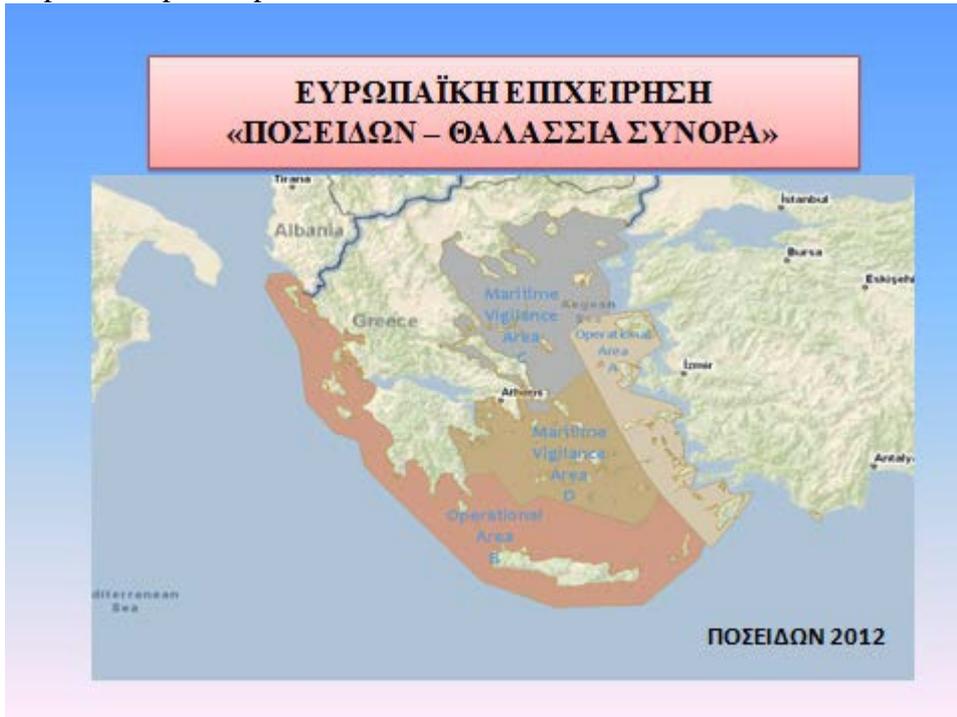


Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013
Map 2: Situation overview



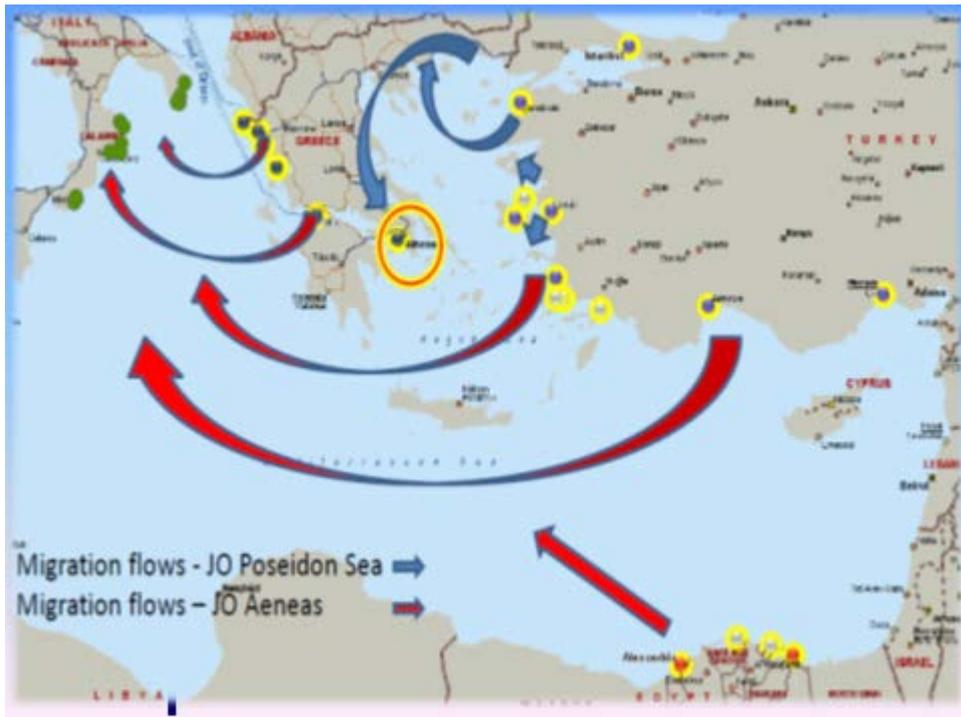
Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013

Map 3: European Operation «Poseidon – Sea Borders»/ POSEIDON 2012



Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013

Map 4: Migration flows –JO Poseidon Sea
Migration flows –JO Aeneas



Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013

FIGURES

Figure 1: Immigrants arrests in each area in the period 2006-2011



Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013

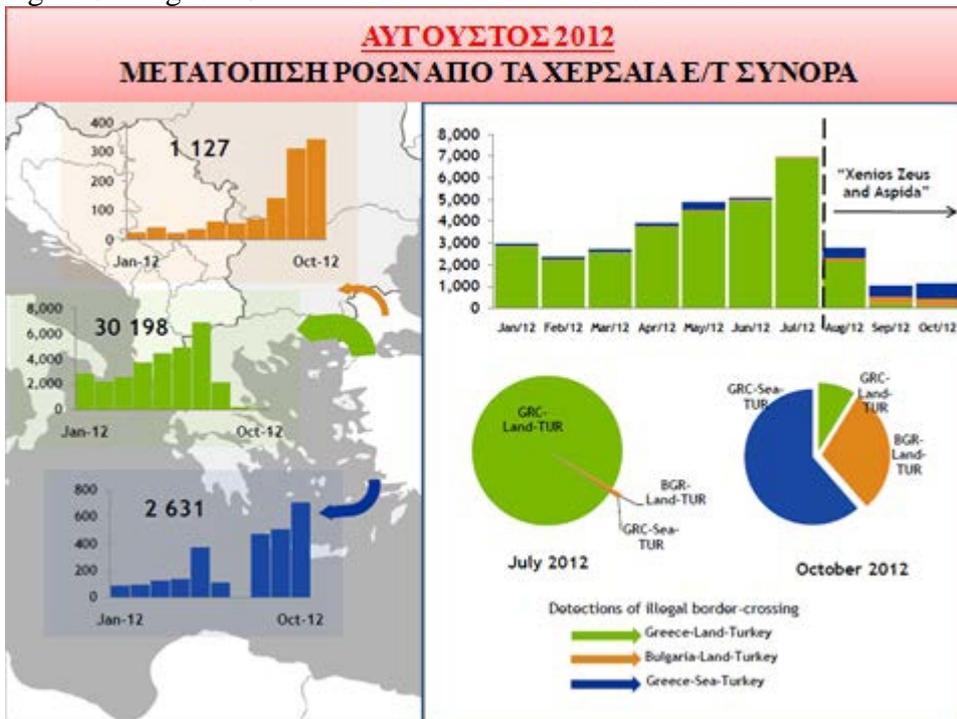
(Είσοδος= Entry, Δυτική Ελλάδα=West Hellas, Ανατολικό Αιγαίο= East Aegean)

Figure 2: Facilitators arrests in each area in the period 2006-2011



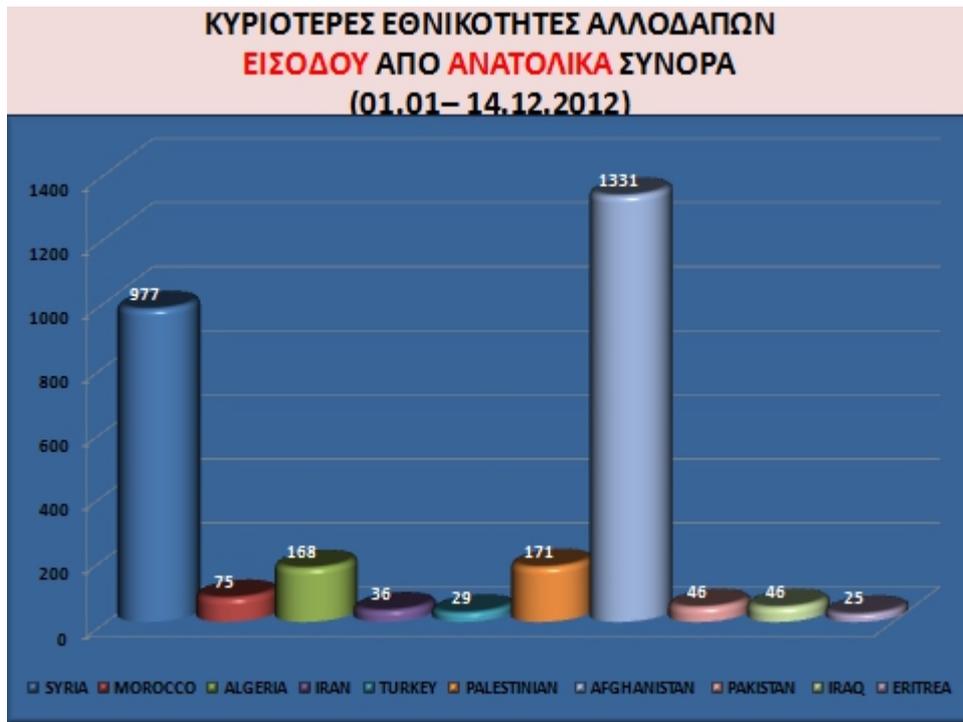
Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013 (Είσοδος= Entry, Δυτική Ελλάδα= West Hellas, Ανατολικό Αιγαίο= East Aegean)

Figure 3: August 2012- Flows shift from land to sea borders



Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013

Figure 4: Nationalities of migrants entering in the Hellenic territory from the East Sea Borders in the period 01.01.- 14.12.2012



Source: Hellenic Coast Guard Headquarter/ Directorate of Sea Border Protection, 01/2013