Editorial

Introduction: The Criminalization of Migration and European (Dis)Integration

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1 Crimmigration and Human Rights

The term ‘crimmigration’ connotes the interconnections between crime and migration in the context of public authorities’ responses to irregular migration. The phenomenon—which originated in the US but is now well established in Europe and Australia as well—refers to criminal law mechanisms and imagery being heavily resorted to as part of a general political strategy for managing migration flows.¹

This can be seen, for instance, in the massive use of detention (typically a criminal-law instrument) in the (administrative) process of checking immigrants’ entitlement to enter, or to stay in, the receiving territory, as well as in the (administrative) process of removing them when they are found to be ‘in an irregular position’. In EU law, as is well known, immigration detention is explicitly allowed by both the Return Directive and the Reception Conditions Directive, respectively in the forms of pre-removal detention and of detention pending an asylum application. To be sure, the use of detention in migration management is not *per se* a recent innovation. Suffice it to mention Article 5.1(f) of the European Convention on Human Rights of 1950 (hereafter: ECHR), which allows ‘the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition’. What is new, however, is the fact that the huge increase, during the last fifteen to twenty years, in the rates of migration towards Europe has changed the practical impact of this measure, which has shifted from being an instrument to facilitate dealing with individual cases of uncertain migrant status to being an avenue to mass incarceration of migrants. As a consequence, the meaning of migration detention has changed accordingly: indeed, the more indiscriminate it is, the less effective migration detention unavoidably becomes as a means for migration management. Notwithstanding this, governments continue to systematically resort to it, seemingly more interested in some collateral effects attributable to it than in its (very limited) capacity to contribute to migrants’ identification and expulsion: effects that should be proper to criminal sanctions alone, such as deterrence, incapacitation, and expression of moral resentment.2

Crimmigration also reveals itself in the growing use of criminal law to sanction migration law violations, with irregular migration increasingly framed as a criminal problem instead of an administrative one.3 Criminalization of

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