

LA MOBILITÀ DELLE PERSONE IN GIOCO: “FORTEZZA” EUROPA

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**Mobility and social security.
The “*ius migrandi*” and the criminalization of migration in the international,
European and national legal frameworks**

Luisa Di Paola

Abstract

This essay aims to study the human mobility and its criminal implications, in a multi-level perspective, in order to analyze the Italian legislation on this subject and verify its compatibility with supranational legislation.

Actually, concerning that point, in 1951 the United Nations undertook to sign the Convention relating to the status of refugees, on which the European Union developed a “system of law” for the member states. In this context, the Italian legislator, starting from the nineties, has considerably increased the number of crimes on the subject of immigration, triggering a particular phenomenon that has been defined by the doctrine as “migratory penalization”. It ended up directly and indirectly criminalizing all the behaviors about the migratory phenomenon. However, the recourse to criminal law showed its absolute ineffectiveness in the management of migration flows. Firstly because, given the criminal law only as ancillary to migration law, the legislators often derogated from the general and special prevention functions; secondly, because a global phenomenon such as human mobility requires an opening of States in order to implement efficient and coordinated policies; lastly, because the justification of security and social alarm, on which these legislative interventions are mostly based, allowed an instrumental use of criminal law, which has then turned out to be a criminal law of fear, of the enemy, mainly aimed at the marginalization and exclusion of the foreigner.