

THE ANALYSIS OF THE PROCEDURES REGARDING THE GRANTING OF REFUGEE STATUS, RESPECTIVELY THE RIGHT OF ASYLUM IN ROMANIA¹

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ABSTRACT:

ROMANIA HAS BUILT ITS OWN SYSTEM REGARDING THE PROTECTION OF REFUGEES AFTER 1991, WHEN IT ADHERED TO BASIC INTERNATIONAL LEGAL INSTRUMENTS, RESPECTIVELY THE CONVENTION FROM 1951 AND THE ADDITIONAL PROTOCOL FROM 1967, AND FURTHER DEVELOPED THE NATIONAL ASYLUM SYSTEM WHICH LED TO THE HARMONIZATION OF INTERNAL LEGISLATION WITH STANDARDS IMPOSED BY THE EUROPEAN UNION REGULATIONS AND OBLIGATIONS, ADHERING TO VARIOUS UNIVERSAL AND REGIONAL BODIES IN MATTER OF HUMAN RIGHTS.

THE ANALYSIS OF CURRENT REGULATIONS SHOWS THE FACT THAT THE ROMANIAN STATE GRANTS THE RIGHT OF ASYLUM TO THE REFUGEES WHICH FLED THEIR COUNTRY OF ORIGIN BECAUSE OF SOME JUSTIFIABLE TERMS REGARDING PERSECUTION DUE TO RACE, RELIGION, NATIONALITY, AFFILIATION TO A CERTAIN SOCIAL GROUP OR POLITICAL OPINION, REQUESTING IN THIS WAY INTERNATIONAL PROTECTION. YET, THE LEGISLATION IS REQUIRED TO BE PERFECTED, INCLUDING WIDER CHECKS IN ORDER TO AVOID GRANTING THE STATUS OF REFUGEE, BY MISTAKE, TO SOME "INFILTRATED" PERSONS, WHOM HAVE PURPOSE TO COMMIT ACTS OF TERRORISM AND STOPPING ILLEGAL IMMIGRATION IN OUR COUNTRY, AS WELL.

KEYWORDS: REFUGEES, PERSECUTION, ASYLUM, GRANTING PROCEDURE, ILLEGAL IMMIGRATION

INTRODUCTION

Nowadays the *refugees*, more than ever, represent *a part of the complex migration phenomena* where political, ethnic, economic, environmental factors or those in regard of human rights and freedom respect determine significant population movements.

The refugee is the person whom, due to some justified terms of being persecuted on grounds of race, religion, nationality, social group affiliation or political opinion, has fled the

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country of origin and due to some fears, he/she cannot or does not wish to come back in the respective country³.

The UN Geneva Convention from 1951, regarding the protection of refugees, regulates the possibility of granting *the status of refugee* to the persons whom left their country of origin due to persecution, whilst establishing their applicable legal regime in the state of refugee.

In the contents of the Convention the term of "asylum" is not mentioned, as a form of protection for foreigners, considering that the regulation of this institution needs to be let in the exclusive competence of the states.

Traditionally, the asylum was considered as a right of refugee for the applicant of another state than the state of initial residence⁴, yet this term came to be interpreted as representing a prerogative of the states to grant protection to exiles and refugees, a confirmed aspect by the International Court of Justice⁵, as well.

The asylum applicant is considered by the doctrine as being a natural person who is followed or persecuted in his/her country of origin for the activities developed in the favour of humanity, progress, peace⁶ or for political, democratic or humanitarian activities and he/she refugees on another state's territory⁷.

Although the concept of *refugee* does not need to be confused with the one of *asylum applicant*, between them there are some similarities, as between the right of refugee and the right of asylum, with the most important similarity being that both institutions are forms of protections for the foreigners.

The status of refugee is differentiated by what supposes to be an immediate protection grant, in the situation of an imminent or plausible danger which is underway, whilst the right of asylum usually implies a definitive protection.

The European Union does not expressly consecrate the right to request asylum⁸, yet in art. 18 of the European Book for human rights shows that: „The right of asylum is granted by respecting the foreseen regulations of The Convention from 28th of July 1951 and by The Protocol from 31st of January 1967 regarding the status of refugees and according to the European Community establishment Treaty”.

RESEARCHING REGULATION REGARDING THE GRANT OF REFUGEE STATUS AND THE RIGHT OF ASYLUM IN ROMANIA

The study of the procedures for granting the status of refugee and the right of asylum is necessary because the coexistence of the forced migration with the economic migration generates numerous problems in the trial to make the distinction between the real refugees (whom are confronted with persecution) and the economic migrants (whom are in search of a better life) or other migrants, of illegal nature⁹ – whom create premises for some authors¹⁰ to

³ Dumitra Popescu, *Public International Right* (Bucharest: Titu Maiorescu University Publishing House, 2005), 86.

⁴ Cristina-Narcisa Vergatti, *The legal state of refugees* (Bucharest: IRDO, 2009), 14 and the following.

⁵ George Elian, *The International Court of Justice* (Bucharest: Scientific, 1970), 90-92.

⁶ Ioan Muraru, Simina Tănăsescu, *The constitutional right and political institutions* (Bucharest: All Beck, 2001), 192.

⁷ Gheorghe Iancu, *Asylum right. Comparative point of view with the legal state of the refugee* (Bucharest: All Beck, 2002), 29.

⁸ Richard Plender, Nuala Mole, „Beyond the Geneva Convention: Constructing a de facto Right of Asylum from International Human Rights Instruments”, in *Refugee Rights and Realities: Evolving International Concepts and Regimes* (Cambridge: Francis Nicholson, Patrick Twomey Publishing, Cambridge University Press, 1999), 81-105.

⁹ Rieko Karatani, „How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins”, in *International Journal of Refugee Law*, vol. 17, no. 3 (2005), 517.

consider that the main weakness of the regulative system regarding refugees has its origin in an artificial distinction between refugees and migrants, created after The Second World War.

Under the legal aspect, both granting the status of refugee as well as granting the status of asylum seeker, are of the competence of the receiving state, which exercises in this way its suzerainty¹¹.

Our country is preoccupied with the regulation and appliance of some correct procedures in this field, taking into account the European and worldwide evolutions in the subject matter¹².

The granting procedures for the international protection of foreigners in the Romanian state is ruled by Law no. 122/2006 (with further completions and amendments), which transposes the international regulations regarding the protection of the refugees and the documents of the European Union in matter of asylum, and which establishes that the responsible institution for the appliance of the specific provisions is *The General Inspectorate for Immigrations* (GII/IGI-ro.)¹³.

The regulations regarding the recognisance of the refugee status and granting the right of asylum¹⁴, from within the V chapter of the law, refers at: *the ordinary procedure* and the *one of family reunion, the accelerated procedure, the customs procedure and the outsourcing procedure for the requests of a new asylum procedure granting*.

- In the *ordinary procedure* of granting the status of refugee and the right of asylum, the term of outsource for the requests is of 30 days from the case undertaking, with the possibility of prolongation of no more than another 30 days.

The request is outsourced by GII issuing a *decision* (after interviewing the applicant and after the checks carried out by the designated functionary), through which it can be decided: the recognisance of the refugee status and granting the right of asylum; granting subsidiary protection; rejection of the asylum application/request.

The appeal against the decision through the application was rejected is *complaint*, submitted at GII¹⁵ or to a competent court.

The appeal is to be judged by the administrative contentious section of the court in whose circumscription the court which pronounced its decision on the subject matter, it's situated.

The term of appeal stating is very short (5 days from stating), fact that can lead to interpretation of endangering the right of the refugee regarding the free access to courts (stated by art. 16 p. 1 of The Convention from 1951), especially if the applicant is not present at the trial (from non-attributable reasons).

The European Union regulations upon the subject matter (for example, the provisions of the Directive 2003/9/EC from 27th of January 2003 regarding the minimum norms for the requests/applications examination to grant the status of refugee) do not impose the member

¹⁰ Rodger Haines, *Gender-related persecution*, în *Refugee Protection in International Law. UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003), 319-350.

¹¹ Adrian Năstase, *The rights of the human being – the religion of the end of the century* (Bucharest: The Romanian Institute for Human Rights, 1992), 24-25; Bogdan Aurescu, *The new suzerainty. Between legal reality and political necessity within the contemporary international system* (Bucharest: All Beck, 2003), 120-121.

¹² Mihai Delcea, *The legal protection of the refugees in the international right* (Timișoara: Romanian University Press, 2002), 201 a.s.o.; Daniel-Ștefan Paraschiv, Ramona-Gabriela Paraschiv, Gavril Paraschiv, *International Public Law* (Bucharest: Pro Universitaria, 2014), 65-66.

¹³ Cătălin Necula, Radu Mircea, *Preparing guide in the field of refugee integration in Romania* (Bucharest: The publishing house of The Ministry of Administration and Interior, 2009), 3-4.

¹⁴ Regulated in the V chapter of the Law no. 122/2006.

¹⁵ If the complaint against the asylum request outsourcing was addressed to GII, then the obligation to forward it to the competent courts is necessary.

countries to yet adopt a certain type of procedures regarding the terms for the examination of the applications of the refugees, and the Constitutional Court of Romania has concluded, by the decision no. 898/2006, that there was no violation recorded in regard to the fundamentally legal provisions by regulating the possibility of appeal statement in terms of 5 days from the decision, and by the absents, taking into account the request of celerity, in order to rapidly outsource the situation of the refugees.

- *The accelerated procedure regarding the asylum applications of the refugees* can be triggered only if, during the ordinary procedure of appliance processing, it is found that it is „obviously groundless”, because the asylum applicant had violated repeatedly and severely his/her obligations by law, posing a danger for the national security and public order; deliberately misled the competent bodies; deliberately omitted to notify the (previous) statement of a protection request in one or more countries (especially if he/she used a fake identity); formulated a new request after a previous similar one, elaborated on UN Convention from 1951 provisions, was rejected by a sure third party state, respecting the procedural granting; appealed to the asylum procedure abusively, dishonestly.

The request is considered „obviously groundless” when it is also founded by: not invoking some persecutions or exposures to a serious risk; lack of term grounds or serious risk; lack of credibility for the asylum request, which is incoherent, flagrantly untrue or contradictory; omission to offer data or information in the way that the applicant might have been exposed to a serious risk; presenting unreal link elements with the request or of fake or faked documents; submitting a request under a fake identity etc.

In all these situations, the asylum request needs to be outsourced in terms of three days from the accelerated procedure triggering, after carrying out the interview and analysing the invoked reasons.

The admission of the complaint leads to the retention of the cause towards outsourcing in the ordinary procedure, which aims to grant the applicant a better preparing to his/her cause.

When the court rejects the complaint against the solution by which the asylum request is rejected, as obviously groundless, the decision is irrevocable.

- *The asylum request submitted to state customs checkpoints* are outsourced in shorter terms than the ones „obviously groundless”, by applying them the accelerated procedure.

The admission of the complaint has as result the admission of the access to Romanian territory as well, never applying the accelerated procedure.

- *The access to a new asylum procedure* is granted in the situation of rejecting the initial request, of new elements are invoked, by which the applicant could not present from non-attributable reasons, or if in his/her country of origin new events arisen, which nature has severe consequences for the applicant.

The complaint against the decision of rejection for the access granting to a new asylum procedure it is to be trialled without the applicants hearing, and the request to grant permission to stay on the Romanian territory till the outsourcing of the complaint is trialled in the council’s room, without parties summoning.

The adopted solutions are irrevocable, fact that raises the problem of right to defence violation and the right to fair trial, protected by art. 21 and 24 from the Romanian Constitution and by art. 6 and 13 from the European Convention for the defence of human rights, thus we appreciate that the regulations in this field need to be perfected.

CONCLUSIONS

From the undertaken researches over the regulation regarding the legal regime of the refugees the conclusion arises that the Romanian law is favourable to them, in respect of the

international convention provisions and of the European Union documents over the subject matter, without discriminations whatsoever.

Thus, the Law no. 122/2006 states, in this way, the importance of respecting the principle of family unity (which assumes the recognition of the refugee status for the family members of the applicant, as well), the superior interest priority of the minor (foreseeing the warranties for unaccompanied minors, protection applicants), as well as for the interdiction of discrimination of all refugees on considerations of race, nationality, ethnicity, language, religion, social category, beliefs, sex, age, sexual orientation, handicap, chronic disease, affiliation to an unfavourable category, material situation, status achieved at birth or afterwards.

From November 2008 at Timișoara, the Centre of Transit in Emergency Regime for the Refugees was created by an agreement concluded by the Romanian Government, The High UN Commission for the Refugees and by the International Organisation for Migrants.

According to this agreement, the Centre can receive up to 200 refugees at the same time, for at least 6 months – persons who can beneficiate of this regime being refugees whom can no longer stay in the first state of asylum, because they are confronted with threats of personal security address, and the asylum granting procedure in the final relocation state is not yet finalised.

Therewith, starting with the year of 2009 Romania became a final relocation state for the refugees, having a yearly schedule (and a share) for granting them.

In essence, the granting procedures of the refugee status and of asylum right in Romania are, generally, proper, with the exception of the situation stated above, thus that *lex ferenda* might impose the summoning of parties to appeal against the rejection decision (as inadmissible) for the request admission to access a new asylum procedure, in order to give the applicant the possibility to exercise the right to defence.

Therewith, taking into account the growth of terrorism acts and the danger of infiltrating into our country of a certain individuals with such “objectives” – by illegal migration or by illegally obtaining the status of refugee - we appreciate that a more careful analysis of the legislation in the field is imposed in the purpose of improvement by also for the management measures taken to prevent such dangers.

REFERENCES

1. **Popescu, Dumitra;** *Public International Right*, Bucharest: Titu Maiorescu University Publishing House, 2005
2. **Vergatti, Cristina-Narcisa;** *The legal state of refugees*, Bucharest: IRDO, 2009
3. **Elian, George;** *The International Court of Justice*, Bucharest: Scientific, 1970
4. **Muraru, Ioan și Tănăsescu, Simina;** *The constitutional right and political institutions*, Bucharest: All Beck, 2001
5. **Iancu, Gheorghe;** *Asylum right. Comparative point of view with the legal state of the refugee*, Bucharest: All Beck, 2002
6. **Plender, Richard și Mole, Nuala;** „Beyond the Geneva Convention: Constructing a de facto Right of Asylum from International Human Rights Instruments”, in *Refugee Rights and Realities: Evolving International Concepts and Regimes*, Cambridge: Francis Nicholson, Patrick Twomey Publishing, Cambridge University Press, 1999
7. **Haines, Rodger;** *Gender-related persecution*, în *Refugee Protection in International Law. UNHCR's Global Consultations on International Protection*, Cambridge: Cambridge University Press, 2003
8. **Karatani, Rieko;** „How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins”, in *International Journal of Refugee Law*, vol. 17, no. 3, 2005
9. **Năstase, Adrian;** *The rights of the human being – the religion of the end of the century*, Bucharest: The Romanian Institute for Human Rights, 1992
10. **Aurescu, Bogdan;** *The new suzerainty. Between legal reality and political necessity within the contemporary international system* (Bucharest: All Beck, 2003
11. **Delcea, Mihai;** *The legal protection of the refugees in the international right* (Timișoara: Romanian University Press, 2002
12. **Paraschiv, Daniel-Ștefan, Paraschiv, Ramona-Gabriela și Paraschiv, Gavril;** *International Public Law*, Bucharest: Pro Universitaria, 2014
13. **Necula, Cătălin și Mircea, Radu;** *Preparing guide in the field of refugee integration in Romania*, Bucharest: The publishing house of The Ministry of Administration and Interior, 2009