

BACKGROUND ON MIGRATION

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ABSTRACT:

SINCE MIGRATION IS A DYNAMIC PHENOMENON THAT REACT IN TIME TO VARIOUS FACTORS CONSTANTLY FEELS THE NEED TO ADAPT THE LEGAL FRAMEWORK TO THE NEW REQUIREMENTS IN THE INTERESTS OF THE ROMANIAN STATE. AN EXAMPLE OF THIS IS THE NEED TO ADJUST THE INTEREST OF THE STATE LAW REGARDING FOREIGNERS SECONDED BY MULTINATIONALS

KEY WORDS: MIGRATION, BORDER, ASYLUM, TRAFFICKERS, FREE MOVEMENT

INTRODUCTION

According to the National Strategy on Migration², the goals the Romanian state has in regard to the admission of foreigners are attracting real investors in the national economy, facilitating access to education for certain categories of people and establishing modern and efficient procedures on family reunification.

Since 2002, legislation has been modernized and annually updated to match the needs of the Romanian authorities to manage the admission of foreigners on its national territory and removing those who do not conform to the legal regime applicable to them.

Building a more humane and a straighter European nation has been a main goal of for the European countries, their leaders, political scientists, sociologists, psychologists, economists, teachers, lawyers and researchers in all areas of social and economic life of the continent.

Throughout history, attempts to unify firstly materialized as a degrading event by using force and the weapons, by religious wars of conquest.

A United Europe energizes into a visionary and generous project of the founding states born of war and animated by the desire to create the conditions for a lasting peace among European peoples. This dynamic activity is renewed incessantly fueled by deficits faced by countries in a Universe which is in constant motion, sometimes subject to rapid and criminal actions.

Progress made by uniting the European states, today, got as far as the Europeans do not have boundaries between them, share the same currency and endorse their trade and

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² Decision No. 616 of 21.04.2004, National Strategy on Migration, Published in Monitorul Oficial, Part I no. 406 of 06/05/2004;

economic interests in the common institutions guided by common laws thus raising living standards considerably. To this benefit aspired and then joined the Romanians, and in considerable time the other states in South-East Europe will have to introduce the common legislation, in a relatively short time, the entire *Community Acquis*.

MAIN TEXT

Inside the Community's territory citizens have the fundamental right to move freely, while respecting *the Schengen Acquis*, to choose where they want to work or live without restrictions from any Member State. This right seems simple to formulate, but there are numerous obstacles that must be corrected for Europeans to take full advantage of it gained after the events that shook the European continent. The most important impediment in progress is creating an *European area of security, freedom and justice*. Inside this area, Europeans should enjoy total freedom of movement, protection against international organized crime, equal access to the judicial system and be guaranteed fundamental rights in whichever Member State of the European Union they are.

Exercising the right to free movement condition requires each person to be able to reside and live self-financed, by labor or personal funds (thus not dependent on social assistance in the host country). This right to free movement, in some cases, may be restricted for reasons of public safety or public order, or public health, but only when there is a serious danger that threatens the fundamental interests of the state.

We will briefly describe the contents of the fundamental right to move and reside on Community's territory of Member States by legally approaching the right to free movement and residence of EU citizens and their family members as stated in the European Parliament and Council Directive EU No. 38 of 29 April 2004, which entered into force on 30 April 2006 modifying article 10 and 11 of the old Council Regulation No. 1612/68 of 10.15.1968 on freedom of movement for workers within the Community. To present day, Member States have adopted laws, regulations and administrative provisions necessary to align with this Directive.

This directive shall apply to any EU citizen traveling or residing in a Member State other than that of his nationality and his family who accompany or join them. Without limiting any right to free movement and residence the people concerned have already obtained, the host Member State, in accordance with national legislation, facilitates entry and residence for the following categories:

- Any other family members, regardless of their nationality, not falling within the definition given and that, in the country they came from, are dependents of the EU citizen concerned or members of his household, or serious health issues that strictly require the personal care of the EU citizen family member;

- The partner with whom the EU citizen has a durable relationship, duly attested.

Directive 2004/38/EC lays down the conditions governing: the right of EU citizens and their family members to move and reside freely within the Member States; the right of EU citizens and their family members to establish a permanent residence in the territories of the Community; restriction of the two categories of rights provided for reasons of public order, public security or public health.

The host Member State shall examine carefully their personal situations and thoroughly justify any denial of entry or residence to these people.

For the European territory, people's and workforce movement is of particular importance, EU enlargement in successive waves, demographic aging of the population in

(Western) Europe in an accelerated rhythm and economic reasons being the main incentives for increased movement of people and workforce.

Migration has become a global phenomenon which all the states from all regions of the world face, internal and international migration being directly proportional to the complexity of development of the local political, social, financial, economic, ecological and humanitarian fields, at a micro or macro geographical level. The states reply to this challenge conditioned by their ability to quickly adapt to the new realities. The degree of concern for identifying viable solutions is manifesting a decrease when analyzed going from destination countries to transit ones and finally to the countries where migrants come from.

Countries previously seen only as "sources" of refugees, among which also was Romania shortly became countries receiving migrants, including refugees, thus increasing considerably the group of European countries where people in need of international protection may apply and seek asylum. Given the outlook is not very reassuring for the coming years, Romanian authorities are making efforts to ensure that the protection the state offers asylum seekers is real, justified, taking action against attempts to abuse of the asylum procedure by some people - illegal migrants that might use this procedure only as a possible "loophole" refuge for continuing migration to the Member States.

Romanian authorities have the permanent concern of migration management development closely related to elements such as the geographical position of Romania, the trends of migration in South-Eastern Europe, the quality of our country's membership of the European Union, the evolution of the Community's *acquis* in the field.

If in the past our country only mainly had a role as a transit country for migration flows from the Eastern states on their way to Western countries with a high level of economic development, at present day Romania becomes a country of destination given its membership to the European Union and national economic stabilization. In this context, the Romanian authorities with responsibilities in the field of migration have taken measures to streamline the management of the phenomenon at similar institutions in EU Member States, the importance of these measures is greater as Romania is a country on the Eastern border of the Union European.

But the Romanian State was and still is a passive actor in the migration of Romanians, indifferent in regard of Romanian migration: Romanian institutions have not taken any measures to help Romanians abroad or their relatives to in the country. This passivity, indifference and lack of professionalism in addressing migration is at least questionable. The perverse effect is that although Romania is an EU member, will probably get a positive light on the medium term, effects of migration will be the same as in the case of countries that are in an immeasurably worse structural situation. Given Romanian migration relative to its population numbers, it seems to be at least a questionable approach.

The main reasons for which foreigners obtain a temporary residence permit are: trading activities, education and marrying Romanian citizens. Lately, it has been recorded an increase in the percentage of foreigners who acquire temporary residence right for family reunification, mainly due to the fact that it is much easier to obtain it this way than for other purposes. This trend, however, is valid in most of the Member States.

We also observe a "specialization" of citizens from various countries in order to obtain the right of residence for certain purposes. Thus, taking into account the operational situation, it appears that Moldovans and Ukrainians mainly request the right to reside for studies, while Chinese people demand it for commercial activities.

Regarding cross-border crime, the percentage of organized criminal groups in international networks is over 70%. All this clearly shows that major offense consistently uses social mobility. Alike companies, organized crime today has in turn a multinational

character, at a European or even global level. This process can begin with the production of illegal goods or purchase of illegal goods, continuing with transportation and ending with their sale in the destination countries. Things come to analyze sales opportunities, risks of being caught and size of existing criminal penalties and these elements can lead to migration movements or concentration of border-crime in some areas.

This development threatens the internal stability of a country, increases criminal activity, leading to harming both individuals and the economy. It is the responsibility of the political class, especially the police and border police to prevent these events with effective and targeted measures. What you need to watch is not only to keep pace with development, but being constantly one step ahead of the commission of these crimes on the basis of strategies.

Investigating cases of trafficking of migrants is a process that involves a phased approach by the police and also of the probation, given the sequentially way this offense is committed: recruitment, mentoring and guidance to migrants, and organizing these activities. It is very important to make a clear distinction between this crime and the trafficking, the difference being that, although both situations involve trafficking in persons, migrants are active participants in the commission of the crime, while victims of trafficking are subject of exploitation in all its forms by members of criminal groups trafficking.

Every year foreigners were identified attempting to cross the state border illegally, over the ground border and also the border points with forged or falsified documents. Increased detection of unauthorized entry is explained by increasing border police staff training, equipping and its proper training.

A steady migration phenomenon remains foreigners legally entering the country and then staying illegally after the visa right of residence expires. The foreigners from countries with high migration (Indians, Iraqis, Afghans, etc..) still use the next routes to reach the *West*:

§ Afghanistan - Iran - Iraq - Turkey - Bulgaria - Romania

§ Afghanistan - Iran - Iraq - Turkey - Bulgaria - Serbia – Croatia while the eastern routes remain active as well.

It was emphasized concealed illegal migration, meaning that:

1. Turkish citizens after legally entering Romania using national passports, use passports issued by the authorities in Greece, Austria, France, Sweden, Spain, Slovenia and Bulgaria, or Italian residence permits, which they falsify trying to leave the country illegally through the western border.

2. Moldovans after entering Romania legally, use the following methods to reach to countries of Western Europe:

- Trying, through intermediaries - Romanian or Moldovan citizens, illegally exiting from the country through the use of Romanian, Belgian, Lithuanian, Polish, Czech, Slovak or Bulgarian falsified passports, by replacing the photo, or residence permits in Italy, Germany, Greece and Spain forged (obtained in the country of origin);

- There were cases where Moldovans shown in airport border crossing points with the intention to travel in a country that does not need a visa (Morocco and Tunisia) with layover in Germany, were discovered with Greek residence permits totally false. Once in Germany they intended to remain there;

- Moldovans shown in airport border crossing points with the intention of traveling to a country that does not need a visa - Turkey, were discovered carrying Romanian forged passports. Once in Turkey they intended to use these passports with the intention of reaching the Schengen countries.

3. Romanian citizens, which restricted the right to travel abroad due to committing illegal acts in the country, using forged Romanian passports by replacing the photography, passports belonging to other people (identity substitution), Irish passports, Hungarian and Georgian or residence permits abroad - forged, in order to reach the Schengen states.

4. Citizens from Singapore trying to enter Romania using Japan and Singapore passport which did not belong to them;

5. Citizens from Cameroon attempted entry into Romania by using forged French passports;

6. Serbian citizens sought entry into Romania by using forged Slovenian passports;

7. Ukrainian citizens tried entering Romania using forged Slovak passports;

By analyzing the operational situation, there were outlined the following phenomena:

- At the green border, groups of Moldovan and Romanian citizens were detected in attempting to illegally exit the country to Hungary and Serbia with the intention to reach Western European countries;

-At the border crossing points, groups of Romanians and Moldovans were discovered hidden in trucks or trains with the intention to illegally get to Schengen countries;

- Asylum seekers in Romania are further found in attempting illegal border crossings on the border with Serbia and Hungary, but their number decreased significantly, mainly due to the decrease in number of people illegally crossing the state border and then calling refugee status in our country (currently, these people enter legally in Romania and subsequently apply for asylum). Asylum seekers who were caught in attempted illegal exit from the country in the period under review were from Somalia, Bangladesh, Nigeria, Liberia, Venezuela and India.

The main countries from where people who have acted illegally in the Romanian border-crossing (both entry and exit) are: India, Bangladesh, Iraq, Pakistan, Turkey, Georgia, Moldova, Liberia, Morocco, Algeria, Cote d'Ivoire, Russian Federation, China, Sudan, Congo, Nigeria, Chechnya, Venezuela, Serbia, etc..

Following specific activities, General Directorate for Combating Organized Crime from the General Inspectorate for Border Police (GIBP) found that some foreigners come to Romania after obtaining scholarships as a result of cultural agreements between our country and other countries, not infrequently using false or forged documents. From the student status, they pursue visas at embassies and consulates in Romania and then head to Western countries.

Border police, in the work they carry out to prevent and combat illegal migration, face, among others, the following issues:

a. Entering Romanian Territory. Entering denial.

b. According to the GIBP there were foreigners not allowed to enter Romania, for different legal reasons such as:

- irregularities in their travelling documents;
- did not have any means to self-support;
- customs matters;
- refusal to pay legal fees;
- false or forged passports / visas;
- criminals discovered in the area of responsibility;
- falsified official documents;
- other legal reasons.

The significant decrease in the number of foreign citizens who were not allowed to enter the country is due to the introduction of the visa regime for citizens from Turkey, Serbia, Ukraine and Russian Federation, which involves checking the conditions required

by law for entering Romania during the visa-obtaining process, and also required by the EU legislation regarding foreigners.

b) Leaving Romania. Leaving denial.

There were people not allowed to leave the country, for various legal reasons, such as:

- irregularities in their travelling documents;
- false or forged visa / passports;
- disobeyed customs rules;
- falsified official documents;
- criminals discovered in area of responsibility;
- hidden in transportation vehicles;
- other legal grounds;

Restrictive measures taken on grounds of public order or public security shall be consistent with the principle of proportionality and shall be based exclusively on the personal behavior of the individual concerned. Previous criminal convictions shall not constitute grounds for taking such measures. Personal behavior of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particularities of the case or that rely on considerations of general prevention shall not be accepted.

In this context, Romania will support any European initiative which aims to improve safety in the Member States by strengthening police cooperation and the exchange of information on cross-border crime.

If in previous years Romania was mainly only a transit point for foreign citizens from countries with migration potential in the last years it shows out that our country gets, with every day passing, a destination for this category.

Currently, the main supplier countries of migrants who remain in Romania for different purposes are Moldova, Turkey and China, citizens of these countries accounting for about 40% of all foreigners with a residence permit.

CONCLUSION

Existing legal provisions and procedures for the admission of foreigners is demanding and Romanian authorities provide the necessary tools to achieve adequate management admission conditions since the time of application for entry visa to Romania's diplomatic missions. The procedure has been simplified and streamlined by implementing Visa Online system.

The legal and institutional framework for controlling migration of foreigners, both at the borders and within the country, is aligned with European standards so that the phenomenon of illegal residence remains at an acceptable and controllable state, a significant increase being in the area of foreigners apprehended trying to cross the border illegally, due in particular to secure the border.

Through the work and results of the competent institutions, there can be seen an increase in interagency cooperation to combat illegal migration and illegal employment.

Since migration is a dynamic phenomenon that reacts in time to various factors, there is constantly the feel of need to adapt the legal framework to the new requirements in the

August 2014

interests of the Romanian state. An example of this is the need to adjust the interest of the state law regarding foreigners seconded by multinationals.³

³ Case no 616 of 21.04.2004; the National Strategy on Migration Published in Monitoul Oficial Part I no.406 of 06/05/2004

REFERENCES

1. Law no. 157 of July 11, 2011 - amending and supplementing certain acts on the machines the foreigners' regime in Romania;
2. GD 1251 of 2006 approving the Methodological Norms for applying Law no.122 2006;
3. GD 1864 of 2006 approving the Methodological Norms for the application of Emergency Ordinance of the Government no. 102 of 2005;
4. Act 56 of 2007 amending and supplementing the Government's Emergency Ordinance no.194 of 2002;
5. Law 122 of 2006 on asylum in Romania;
6. Act 260 of 2005 approving Emergency Ordinance of the Government no.102 of 2005;
7. Law 500 of 2006 on the approval of Government Ordinance No.30 of 2006;
8. Ordinance 30 of 2006 amending and supplementing the Emergency Ordinance of the Government no.102 of 2005;
9. GO 44 of 2004 regarding social integration of the foreigners that have got a form of protection or the right to reside;
10. Emergency Ordinance of the Government 55 of 2007 on the founding of the Romanian Bureau for Immigration;
11. Decision 616 of 21.04.2004, National Strategy on Migration published in Monitorul Oficial no.406 of 06/05/2004;
12. Law 376/2013 brings changes on asylum and migration in Romania 24.12.2013;
13. Protocol against the Smuggling of Migrants by land, air, and sea as an addition to the Convention of the United Nations against Transnational Organized Crime.