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**Improving the Regulatory Framework for the Legal Status of Applicants
for International Protection in the Context of the implementation of
Relocation Mechanisms**

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Abstract: The unprecedented refugee crisis facing the European Union, the impossibility of some Member States unable to cope and to process the massive flow of people on their borders and blocking the “Balkan Route” that moved towards the states where they wanted to reach, led the pressing need for putting in place new instruments to manage the situation. The mechanisms of relocating refugees, the principle of solidarity through quotas imposed on member states put to the authorities in these countries, implicitly in Romania, a number of issues with great difficulty in solving them. By the present study we have highlighted some of these issues in connection with the specific legal status of refugees resettled in other countries in Romania and any possible solutions to solve them.

Keywords: refugees; migrants; relocation, asylum application, restrictive measures

1. Introduction

Both in everyday language and in the specialized literature it does not always make a distinction between the term refugee as defined by the Convention on the Status of Refugees, signed at Geneva on 28 July 1951² and the term of “migrated” which means, usually, the person moving to another country for economic reasons.

In 2015, according to official statistics, more than 1.25 million refugees, driven out by wars, persecution or poverty, have sought asylum in EU countries.

The expansion of the ISIS terrorist group and the extension of the devastating war in Syria have caused exponential growth of refugees in this area³. These refugees were added to the growing number of refugees from other conflict zones such as those in Afghanistan, Libya, and the multitude of immigrants from other countries and especially from Pakistan, Eritrea, Iran, Algeria, Tunisia, Egypt, Nigeria, etc.

In the recent years and especially during 2015, the complex consisted of Mediterranean Sea and the Aegean Sea has become the “epicenter” of migration towards the developed countries in Europe, the

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² Convention on the Status of Refugees, signed at Geneva on 28 July 1951, to which Romania adhered by the Law no. 46/1991 for Romania's accession to the Refugee Convention and Protocol on Refugees.

³ According to Eurostat, in 2015 the number of asylum seekers from Syria has doubled and reached 362 775 people and the number of Iraqi refugees has increased seven times and reached 121 535.

island of Lampedusa in Italy and the Greek islands¹ becoming gateways for those fleeing the wars, persecution and poverty.

Beyond the challenges that the European states had to face, both countries of entry of refugees and transit countries on the Balkan route and those of destination, the drama of the situation, unprecedented in the modern and contemporary history has revealed also the high risks of crossing the two seas in boats more or less improvised, made available by unscrupulous traffickers, an approach which resulted in thousands of human casualties.²

The European Union is still bruised by an enhanced and damaging bureaucracy (Savenco, 2011, pp. 103-111) while the Member States have had different positions and still have positions different from the refugee's crisis even reaching to serious dimensions. Simultaneously we assist also to a radicalization of societies in these countries, the terrorist attacks having members of ISIS groups, having in turn a complication effect and even more of the situation so that a Europe as a free society, without borders, being economic, political or social, it could remain a project without achieving the prospects.

Romania was so far off the main route of travel of refugees towards countries economically prosperous, but this has not excluded it from being part of the problem. Following the decisions taken by the European Council on implementation of the mechanisms relocation it was decided that our country must receive a total of about 6,200 refugees over the years 2016-2017, as a quota. Beyond the anticipated and declared institutional incapacity of "hosting" of these refugees, Romania is in a position to be in agreement with the majority of EU countries in tackling and solving the refugee crisis solidary manner.

2. International Protection Granted by the Romanian State

According to the asylum law in Romania³, in accordance with the Geneva Convention of 1951⁴, the refugee status is recognized, upon request, to an alien who, after a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinions or membership of a particular social group, is outside the country of origin and is unable or, owing to such fear, is unwilling of receiving protection of that country and those persons without citizenship who are outside the country of his former habitual residence due same reasons mentioned above, is unable or, owing to such fear, is unwilling to return.

According to the legislation in force, the receipt, recording and processing asylum applications, providing assistance to asylum seekers during the procedure and assistance for integration are activities taking place at regional centers for accommodation and procedures for asylum seekers located in Bucharest, Galati, Timisoara, Giurgiu, Radauti and Maramures, territorial structures

¹ In 2015, Greece reached almost 860,000 refugees and now their number is close to one million people, after only the first two months of this year were registered more than 130,000 refugees.

² This results from the data of the International Organization for Migration (IOM), which reveals that in 2015, no less than 3,770 migrants have lost their lives trying to cross the sea. Of these, 800 died in the Greek islands and the rest after trying to reach Europe on the north coast of Africa.

³ Law no. 122 of 04.05.2006 on asylum in Romania (last updated by Law no. 331 of 16 December 2015 published in the Official Monitor no. 944 of 21 December 2015).

⁴ Convention on the Status of Refugees, signed at Geneva on 28 July 1951, to which Romania adhered by the Law no. 46/1991 for Romania's accession to the Refugee Convention and Protocol on Refugees.

specialized in asylum issues, totaling 1,500 seats¹ and which are organized and function according to art. 3 paragraph (2) of Law no. 122 of 04.05.2006 on asylum in Romania (updated).

In order to align our country to the requirements imposed by the specifics of the issue newly created by the shares of distributed refugees, it was necessary to amend and supplement the legal framework regulating the legal status of persons in a position of benefiting from some form of international protection from the Romanian state.

Thus, by Law no. 331/2015 amending and supplementing certain legislative acts in the foreigners domain² have brought changes and additions to the legal framework ruled by Law on asylum in Romania. It was provided so that, on the basis of decisions made at EU level or bilateral agreements concluded by Romania with other Member States of the European Union, the Ministry of Internal Affairs, the General Inspectorate for Immigration may propose taking over by Romania of the following categories of aliens:

- a) refugees on the territory of third countries, whose status was recognized according to the Geneva Convention;
- b) asylum seekers and beneficiaries of subsidiary protection granted by a Member State of the European Union.³

Legislative amendment provides that the number and conditions for taking foreigners subject to decisions taken at EU level or bilateral agreements concluded by Romania with other European Union member states are established by Government decision.

These people have the same rights and obligations in Romania as the applicants who have applied for asylum in Romania, that is beneficiaries of international protection in Romania, being practically assimilated.

3. Legal Instruments for the Protection of State

Starting from the need to provide the authorities the legal instruments to prevent cases at risk of absconding, those endangering the national security and limiting the abuse cases to the asylum procedure, the amendments to the asylum law in Romania have included a series of restrictive measures that can be taken to applicants for international protection, based on an individual analysis, namely: a) obliging to appear at the headquarters of the General Inspectorate for Immigration structure; within the meaning of this provision, during the performance of asylum procedures, the General Inspectorate for Immigration may provide, by a reasoned decision, the compulsoriness for the applicant for international protection to report periodically at established dates and hours and upon request to the headquarters of one of its territorial structures.⁴

b) establishing residence in a regional center of procedures and accommodation of asylum seekers;

This restrictive measure is to establish a place of residence for the applicant for international protection in a regional center of procedures and accommodation of asylum seekers, even if he has

¹ Centers are in Bucharest (470 seats), Giurgiu (200 seats), Maramures (250 seats), Galati (300 seats), Radauti (180 seats) and Timisoara (100 seats).

² Published in the Official Monitor no. 944 of December 21, 2015.

³ Art. 3, paragraph 5 of Law no. 122 of 04.05.2006 on asylum in Romania (updated).

⁴ Art. 19, paragraph 3 of Law no. 122 of 04.05.2006 on asylum in Romania (updated).

means of subsistence, and compulsoriness of not to leave the place except after informing the Head of the center.¹

c) placing in enclosed spaces specially arranged;

Within the regional centers for procedures and accommodation of asylum seekers already established or newly established, the General Inspectorate for Immigration has the obligation to establish specially designated enclosed spaces as places for temporary accommodation of applicants for international protection. The applicant for international protection can be placed in such an enclosed space specially arranged with temporary restriction of freedom of movement only in the following circumstances²:

- for verifying the identity declared;
- for establishing the elements underlying the application for international protection, which could not be achieved without taking action, especially where there is a risk of circumvention of the applicant;
- at the request of one of the institutions with responsibilities in national security, indicating that the applicant for international protection presents danger to national security.

d) taking or, where appropriate, keeping into public detention.

Detention of applicants for international protection may be ordered only if there are insufficient or not possible other restrictive measure in relation to the procedure in which it would be decided also the the purpose for their decision.

Both the *measure of placement in closed spaces specially arranged* and the *taking or, where appropriate, keeping into public detention* can be ordered in writing, for a period of 30 days, by a reasoned order in fact and according to the law by the prosecutor specially assigned in the office attached to the court of appeal in whose jurisdiction the accommodation is to be placed in the applicant for international protection after a reasoned request to the General Inspectorate for Immigration.³

With these new rules adopted, the competent authorities are obliged to ensure access to the asylum procedure to any foreign citizen or stateless person on the Romanian territory or at the border, from the moment of the manifestation of will, expressed in writing or orally, showing that it seeks the protection of the Romanian state, except as expressly provided and listed exhaustively in the law when the asylum application can be rejected as being inadmissible, by a reasoned decision, namely:

- Art. 50¹ – the request for asylum of an alien who benefits from international protection granted by another Member State;
- Art. 91, par. (2), letter b) – the application for access to a new asylum procedure;
- Art. 95, par. (2) - If after an individual analysis it shows that the criteria under which a country can be considered first country of asylum and if the alien is readmitted by this country;
- Art. 96, par. (2) - when the stranger tried to enter or has entered illegally into Romania coming from a European safe third country and this country expressed its agreement on readmission;
- Art. 97, par. (2) - when there is a safe third country with which the applicant has a connection and the third country has agreed on receiving the alien in its territory;

¹ Art. 19 paragraph 4 of Law no. 122 of 04.05.2006 on asylum in Romania (updated).

² Art. 19 paragraph 5 of Law no. 122 of 04.05.2006 on asylum in Romania (updated).

³ The applicant for international protection to which it was ordered the placement in a space or taking or, where appropriate, keeping in detention may submit, within five days, a complaint to the Court of Appeal in whose territorial jurisdiction the accommodation center is situated, it is required to solve within 3 days from the receipt. The complaint does not suspend the measure and it is exempted from judicial tax. The court decision is final.

- Art. 120, par. (2), letter a) - when it finds the existence of another Member State's responsibility for examining the application, under the Dublin Regulation.

Despite the progress in the improvement of the legal framework, it is obvious that, as the European Union is not ready to meet the major challenge of refugee crisis, Romania fits into the same category.

It requires a substantially budgetary effort to increase the capacity of Regional Centers for accommodation and procedures for asylum seekers and eventually the establishment of new ones, for the development of enclosed spaces specially designated as places for temporary accommodation of applicants for international protection in these centers and also to complete organizational charts with qualified personnel and fit for performing such tasks in this area.

4. Conclusions

From the brief analysis we can summarize that Romania has made great strides on the line of improving the legal framework required to manage the flow of refugees and it will have to implement its provisions, especially regarding the expansion of accommodation facilities and development of others as needed, setting up premises closed specially designed as places for temporary accommodation of applicants for international protection, the necessary budgetary allocation for operating and personnel required to complete the organizational charts necessary for a smooth operation.

But it is increasingly obvious that the European Union must act with far more determination to consistently succeed in facing the challenges of the refugee crisis. Without believing that the mandatory quotas for refugees formula is the best solution, we appreciate the solidarity union should urgently exceed the level of political statements.

The relocation mechanisms are only a momentary palliative that highlight the inability of the EU decision-making bodies to understand the causes and act to prevent and counter it at the starting point.

Issues such as the transformation of FRONTEX into an agency to manage effectively the guarding of the external borders to no longer permit the uncontrolled access to any categories of persons, refugees or migrants, the establishment and operationalization of the European Passenger Name Record or implementing the regulation establishing a European Public Prosecutor are measures that no longer be postponed.

It is imperative to find the formulas the necessary to ensure effective cooperation and collaboration structures between intelligence and law enforcement agencies from all EU member countries for combating terrorism, organized crime and human trafficking.

Last but not least the EU must approach concrete policies in the domain of conflict prevention at international level and to reduce regional development disparities.

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