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**Granting the Right to Asylum – the  
Implications on the National Security**

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**Abstract:** Given all the implications it entails the obligations under relevant international conventions on asylum and the need to harmonize them with national interest, at the level of each state has led to the development of international standards on asylum procedure. Thus, at European level there were developed a series of concepts, the legislative and institutional measures, which aimed at, on the one hand the people in need of international protection, enjoying effective protection and a standard of appropriate support and secondly discouraging any form of abuse to the institution of asylum.<sup>2</sup>

**Keywords:** international conventions on asylum; EU; international protection

Besides the directives<sup>3</sup> and of others existing regulations, currently there are under discussion and / or pending for adoption several other migration directives, plans and programs set out in the European Union<sup>4</sup> in the field. A special place is occupied by the asylum regulations. In this sense it should be mentioned first the distinction between asylum seekers and other migrants categories. Thus, while the migrant has opted to leave their home for economic, social, cultural, family, etc. reasons, the asylum seeker/the one who received a form of protection (refugee status, subsidiary or temporary protection) is forced to leave home because his life or freedom are threatened.

The International agreements establish the obligation of signatory states to ensure unhindered access to the asylum procedure and the principle of non-returning (i.e. prohibition of measures of return, expulsion, extradition) of an applicant or person who is during the procedure to apply for asylum, accompanied by providing the necessary assistance during the course of the asylum procedure and then, for those who receive some form of protection. The European policies and legislation on asylum represents a distinct field of European regulation in the migration domain.

The simplest difference is that, while the asylum seekers or persons who received a form of protection were forced to leave their countries of origin as their life or freedom was threatened, in the case of migrants, they choose for various reasons, to leave their countries of origin and settle temporarily or permanently in another state, these reasons may be economic, social, cultural, family, etc.

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<sup>2</sup> All these measures were covered by the documents that make up the *acquis* in the field of asylum and it concerns: Creating a Common European Policy in the Asylum domain (Tampere Programme); The Hague Programme - setting out measures aiming at assistance and cooperation with the countries from the origin and transit regions with EU neighboring countries, and particular emphasis on the measures of social integration of foreigners.

<sup>3</sup> [www.europa.eu.int/](http://www.europa.eu.int/).

<sup>4</sup> [www.euractiv.ro/uniunea-europeana/articles](http://www.euractiv.ro/uniunea-europeana/articles).

Starting from these premises, though the international documents to which Romania is a party<sup>1</sup> it was established the obligation of states to ensure the unhindered access to the asylum procedure and the principle of non-returning (prohibition of measures of return, expulsion, extradition, etc. of an asylum applicant or a person who received a form of protection) and appropriate assistance to these persons during and after the asylum procedure, in the case of those who receive some form of protection.

All these measures have started on the one hand from the need to fight a secondary migration phenomenon of asylum seekers, known as “shopping asylum”. This phenomenon consists in that a person before completing an asylum procedure in a European country leaves to another European country to start a new procedure and so on, in some cases there were people who prepared up to 8 procedures which allowed them a stay and free material assistance in Europe for over 10 years. Analyzing this phenomenon it was observed that in some cases this secondary movement of asylum seekers was justified by the standard differences existing from one Member State to another, differences in procedures, level of assistance, the existence of national communities, opportunities for integration, etc. the Romanian Immigration Office of the Ministry of National Affairs has helped in creating a policy of Romania in the field of asylum and refugees, as part of a policy in the immigration domain, which respects the obligations assumed internationally by the legal instruments to which our country joined, and the national interest by achieving a balance between the rights and obligations of these categories of people.

Often, the asylum has been considered an obstacle in the fight against illegal immigration, a cause of frustration for the competent authorities in border control or the legality of the stay of foreigners on Romanian territory, whereas by asylum applications, those caught in such situations prevented the return or removal measures from the territory. Thus such assessments are not real and asylum should not be regarded as a tool to facilitate illegal migrants, but as part of national<sup>2</sup> and international law to be respected in all measures taken to combat illegal immigration measures that the Romanian Immigration Office contributes substantially.

Thus, asylum law was amended successively since 1996, to be consistent with the *acquis communautaire* that has undergone many changes.

In 1999, Tampere, formulated a series of common policies on migration and asylum, and an eloquent proof of the fact that the issue related to migration is a priority in the EU's agenda is the discussion of the European Council in Seville in 2002 and Council Informal European at Hampton Court in October 2005. The need for the formulation of such policies has been determined that currently there are used more and more important mass expulsions as a weapon of war and as a means to create homogeneous culturally or ethnic societies and increasingly more often as a direct or concealed reason to support territorial claims or self-determination of massive flows of population - refugees or forced move, both in the pre-crisis, and especially post-crisis period.

There is currently an ongoing process of adaptation and diversification of the routes and routes of illegal migration and foreign mafia networks operating in Romania have specialized in committing illegal acts at the border. To combat these phenomena it was concluded the “Schengen Plus” Treaty on 20 May 2005 between Germany, France, Austria, the Netherlands, Luxembourg, Belgium and Spain with the aim of effective cooperation in the fight against terrorism, crime and illegal immigration, was

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<sup>1</sup> See in this respect the 1951 Geneva Convention on refugees

<sup>2</sup> The Legislation with influence on migration in the EU is contained in the Accession Treaty of Romania and Bulgaria to U.E. signed on 25 April 2005 in Luxembourg.

issued an endpoint security software that is generically called ISPS - the International Code for the Security of Ships and port facilities.

Compared to the above, we can see that in the recent years, the European migration policies are focused on illegal migration and the development of repressive measures.

After the events of 11 September, the UNHCR called for the US to rigorously apply the exclusion clauses, as defined by article 1 (F) of the Refugee Convention, since the Convention was not designed to create an environment for crime, but rather its purpose is to protect persecuted people. It was banned the appliance of the provisions of the Geneva Convention to the persons who are guilty, before being recognized as refugees, of committing serious crimes, including the terrorism actions. In the new context created by the events of September 11 in the United States it was necessary to regularly review, by the U.E. Member States, the files of those who obtained protection whenever there were new elements, especially when there are notified bodies with responsibilities in national security domain, about the existence of signs in this respect and the need to determine accordingly who meets the requirements of the Geneva Convention, so as to ensure effective implementation of this international document. It was agreed in principle that all asylum claims to be assessed and not rejected as being inadmissible in certain cases, on grounds of public order and safety, giving thus substance of the principle of non-returning as through Geneva Convention enshrined certain situations where asylum seekers cannot commonly use this benefit due to the fact that their deeds are unworthy to benefit from international protection. A major concern of the Romanian Immigration Office was a failure to register any case of denied access to proceedings, if it was valid or any case of returning a person in real need of international protection. RIO, moreover, is in direct contact with the Border Police and other institutions in the area in order to solve all applications for asylum.<sup>1</sup> There have been efforts for staff in all institutions who come into contact with persons seeking asylum to know what to do and react wisely, by distinguishing unmistakably situations when a person asks for protection status or not, or completed protocols with other structures of the defense, public order and national security, with specific reference to measures to combat illegal migration.<sup>2</sup>

The threats in security matters which Europe is facing are multifaceted, interrelated, complex and increasingly international as regards their impact and increasingly inseparable feature of internal and external security.<sup>3</sup> No Member State can ensure its security alone. Nearly nine of ten European Union (EU) citizens believe that security should be dealt with not just at national but also at EU level.<sup>4</sup>

A series of community measures taken in the recent years and their unforeseen effects on short and medium term equally shake these foundations. For example, the most “subversive” proves the reduction of agricultural subsidies in EU countries that, for many years, have received huge funds and

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<sup>1</sup> However, a particular concern of the Romanian Immigration Office is the concrete activities undertaken on countering illegal migration. In this regard we highlight the following: the principle of safe third country, the application of the accelerated procedure for manifestly unfounded applications, reducing the time of processing an asylum application (95% of cases are analyzed in a period of not exceeding 30 days - one the lowest period compared to procedures for processing applications from EU countries) operative communication at IGPF of people leaving the centers, an agreement with the International Organization for Migration for voluntary repatriation of people who went through the asylum procedure.

<sup>2</sup> Official statement on combating illegal migration of foreigners, in the attention of the Romanian Border Police, 15 July 2008 [www.politiadefrontiera.ro](http://www.politiadefrontiera.ro).

<sup>3</sup> The Commission will further analyze the extent and manner in which the results of conducted activities in this communication can support and supplement the guidelines on external actions and relevant tools in this regard. The Commission is currently preparing a Communication on better coordinating the EU's external assistance role in security. Source: Statement from the Commission to the European Parliament and the Council on public-private dialogue in research and innovation in the security field (SEC-2007/1138) and (SEC-2007/1139) Brussels, 11.09 2007.

<sup>4</sup> Special Euro barometer, “The role of the European Union in policies regarding Justice, Freedom and Security”, Fieldwork: June-July 2006, Publication: February 2007.

attracted cheap, foreign labor force.<sup>1</sup> In this context, one of Europe's main objectives is to preserve its values of open society and civil liberties, while responding to the growing threats to security. At the same time, Europe must secure its economy and its competitiveness against an increased threat of disruption to its basic economic infrastructures, including industrial assets and transport networks, energy and information. The security issues of a State arise from the report, existing at a given time, between the threats with which it is confronted and its ability to seize them appropriately, to interpret them correctly and to counter them effectively. It is understood that the perception of the concept of security in a democratic society cannot be equated with the official security perception of a totalitarian, dictatorial, terrorist state. The latter cannot be discussed, as the concept of security in this case refers to defend the ideology that underpins the very existence of these types of state other than democratic. In the process of analyzing the premises of expression, it must focus on integrated analysis, the only one able to contain the complexity of the problems that lead to the ways of preventive identification of challenges, risks and unconventional threats.<sup>2</sup>

## **Conclusion**

It may be said that the main threats to national security are expected from the non-military and unconventional domain, such as: political, diplomatic, technological, commercial, financial pressure, media campaigns on different themes and aggressions (pressure that is already becoming violent) information, psychological actions, economic, financial and technological actions/aggression, computer hostile actions, cultural and religious penetration (defeatist and fundamentalist), intelligence and disinformation, massive population migration with destabilizing effects and loss of national identity.

## **Bibliography**

[www.europa.eu.int/](http://www.europa.eu.int/).

[www.euractiv.ro/uniunea-europeana/articles](http://www.euractiv.ro/uniunea-europeana/articles).

The 1951 Geneva Convention on refugees

[www.politiadefrontiera.ro](http://www.politiadefrontiera.ro).

Special Euro barometer, "The role of the European Union in policies regarding Justice, Freedom and Security", Fieldwork: June-July 2006, Publication: February 2007.

Modiga, Georgeta (2013). Managerial Convergence in the Evolution of Public Institutions in the European Union. *Acta Universitatis Danubius. Administratio*, Vol. 5, No. 2, pp. 36-47.

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<sup>1</sup> We list a few: crops of oranges, olives, strawberries and grapes in Greece, Italy, Spain and France.

<sup>2</sup> The main threats consist of: challenges - actions, steps, statements, reactions to actions made directly, indirectly or obscure, from abroad or from within, by a potential opponent that could generate tension in the whole state security; risks - actions, approaches, positions, own statements, made by the political, legislative, executive central power and local government aiming at internal life of the country and the foreign policy domain that expose the national security state.