



THE 12TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Immigrant's Legal Status in International Law

The Protection Granted to Refugees in Romania

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Abstract: In this study we will extract from the norms referring to refugee status the types of protection that can be granted to an asylum seeker in Romania and the necessary conditions for obtaining them. We will also analyze the forms of protection in order to understand in detail the differences between them. Thus, in Law no. 122 of 2006 on asylum in Romania are precisely specified three forms of protection that could be offered to an asylum seeker. The legislator can recognize refugee status and may grant subsidiary or temporary protection. At the same time, the rights and obligations of the beneficiary of a certain form of protection will be extracted from the existing rules. In this respect, it will be possible to differentiate between the asylum seeker, the beneficiary of a form of protection and a foreigner who is not in the above-mentioned situations. The difference between the first two categories of persons and the latter is presented in the national legislation itself, the statute of which is separately regulated in distinct laws.

Keywords: refugee; protection; migration; asylum

1. Introduction

In general, a refugee, as provided for in the 1951 Convention, is a person who is in a situation of being persecuted because of race, religion, nationality, belonging to a particular social group, or his political opinions, as well as other grounds listed in national rules, causing fear for his and his family's safety. However, they can request asylum and other categories of people who are not considered refugees but still need protection. However, the dilemma relates to explaining terms such as refugee, asylum and protection in a larger context and trying to understand the differences between the forms of protection generated by the situations in which category a person is.

Addressing this issue is not by chance, the interest in regulating the protection of the individual refugee was generated by some international political events in which our country was also drawn as a member of the European Union. Armed conflicts in the countries of the East have forced the civilian population to seek protection, thus generating the arrival of a large wave of refugees in the territories of the Member States, have created divergences within the European Union, in the context of establishing a balance between Member States' efforts to receive such persons. The massive influx of displaced persons and the refusal of the Member States to assume the responsibilities and consequences of this reception have led to some drastic decisions by the European Union, with quotas

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of refugees being made mandatory for each Member State. Romania's obligation to obey and accept the quotas of refugees, established by the European Union, without taking into account the capacity of the Romanian state to receive them and to provide minimum conditions of existence. Both curiosity and indignation have made us start looking for answers to a significant number of questions related to this theme, namely: who are actually migrants and refugees? Is there any difference between them, their rights and obligations? Are all, without exception, entitled to protection?

2. Forms of Protection Granted to Immigrants, according to the Romanian Legislation

2.1. Recognition of Refugee Status

Article 23 of Law no 122 of 2006, which regulates asylum in Romania, *“recognizes the refugee status, upon request, to a foreign citizen who, following a well-founded fear of being persecuted on grounds of race, religion, nationality, opinion or affiliation to a particular social group, is outside the country of origin and who cannot or, because of this fear, does not wish to claim the protection of that country, and to the stateless person who, for the reasons mentioned above, outside the country in which he resided cannot or, because of this fear, does not want to return to that country and to whom it does not apply the causes of exclusion from the recognition of refugee status laid down by this law shall not apply.”*

The first requirement to fulfill this form of protection is extracted both from the above-mentioned article and from the 1951 Convention which is the fundamental act in regulating this area. Thus a foreign citizen or a stateless person who makes a request for obtaining international protection from the Romanian state must be in the fear of being persecuted on the grounds of:

- Race;
- Religion;
- Nationality;
- Political Views;
- Belonging to a certain social group;

There are also other important the elements that would make it easier to obtain protection:

- He is outside the country of origin;
- He cannot or does not want to claim protection from the country of origin because of fear.

Our attention will, however, rather stop on the combination of words “well-founded fear” which, in the opinion of some authors, is the key element in this definition under which refugee status is established. The notion of fear is subjective, the definition involves the presence of a subjective component to the person requesting to be recognized as a refugee. Therefore, the determination of refugee status will consist more in assessing the applicant's statements than in judging the existence situation in his or her country of origin.¹ The “fear” that reflects the mood of the person in need of the help is given the term “well-grounded” that judges the gravity of the situation on a case-by-case basis, or whether the applicant's fear is well founded.

In order to properly assess the real condition of an applicant for international protection, it is not enough just the existence of the subjective element that concerns the fear of being persecuted for the

¹ UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 19.

reasons set out in the definition. Without an in-depth analysis of the circumstances that led to the creation of a state of fear, it could be appreciated by the person in need more intensively than it would be, misleading the competent authorities designated to establish the status of refugee. Therefore, the competent authorities who are called upon to determine refugee status are not required to judge the conditions of the applicant's country of origin. However, the applicant's statements cannot be considered abstract, but should be considered in the context of concrete situations. Knowledge of the conditions of the applicant's country of origin is an important element in assessing the credibility of the applicant. In general, the applicant's fear must be regarded as well-founded, if he can reasonably determine that his continued stay in the country of origin became intolerable for himself for the reasons indicated in the definition or it would become intolerable for the same reasons, if he was to go back.¹

2.2 Granting Subsidiary Protection

Subsidiary protection comes in addition to the first form of protection discussed previously in the present paper. Considering that the granting of refugee status depends on the fulfillment of conditions strictly listed in the 1951 Convention, there is the possibility for the persons in need, but not falling within these requirements, will remain without support. This form of protection is granted to an asylum seeker, a foreigner or a stateless person, if he / she does not qualify for refugee status but is likely to be in serious risk of returning to the refugee's country of origin or where they were habitually resident. The Convention on Refugee Status does not provide for this form of protection. However, in international law there are a large number of conventions and treaties created in order to protect the individual against the application of ill-treatment as well as respecting the rights of an individual.

The Romanian State according to art. 26 of Law No 122 of 2006 on asylum in Romania “*grants to a foreign citizen or stateless person who does not fulfill the conditions for the recognition of refugee status and on which there are reasonable grounds for believing that in case of return to the country of origin, the country in which he or she was habitually resident would be exposed to a serious risk within the meaning of paragraph 2 which cannot or, due to that risk, does not want the protection of that country and does not apply to the exclusion from the grant to this form of protection provided by this law.*” By comparing both rules on refugee status, we conclude that the 1951 Convention leaves it up to States to extend the arrangements and forms of asylum. This, compared to the Romanian law, provides only a way to provide protection to an asylum seeker, namely refugee status.

We note that in both cases and here we refer to forms of protection, both in the case of granting refugee and subsidiary status, the asylum seeker is in a position to fear for his life and to be outside the state of origin. Here the difference between these two forms of protection is generated by the totality of circumstances that have led to the induction of the fear of an applicant. Thus, the novelty of subsidiary protection is that it can be offered to people who do not fall within the notion of refugee. In this sense, those who risk being persecuted for reasons other than those provided for in the 1951 Convention, race, religion, nationality, political opinion or belonging to a social group fall within this form of protection provided that they believe will be exposed to a serious risk when returning to their home country. The national rule continues at the second paragraph of Art. 26, on subsidiary

¹ UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 21.

protection, explaining the term “serious risk”, namely: “*serious risk, within the meaning of para. (1) shall be understood as:*

1. *sentencing to death penalty or execution of such a punishment; or*
2. *torture, inhuman or degrading treatment or punishment; or*
3. *a serious, individual threat to life or integrity as a result of generalized violence in situations of domestic or international armed conflict, if the applicant is part of the civilian population.*”

Under the provisions of paragraphs 2 and 3, it is natural to grant protection, provisions of this kind being governed by international rules. Here we mention the “Universal Declaration of Human Rights” and the “Convention for the Defense of Human Rights and Fundamental Freedoms” which guarantees to every human being the right to life, liberty and security. Here too we find provisions condemning torture or cruel, inhuman or degrading treatments.¹ Other provisions on the protection of individuals against torture are also found in the “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” which states that “torture” is represented by any act intentionally caused by a person, in order to produce a strong pain or suffering of a physical or mental nature in order to obtain information or confessions from that person or to punish it. Taking into account the aforementioned regulations, we can say that the form of subsidiary protection is a guarantee for an asylum seeker in one of the situations provided in paragraphs 2 and 3 of the second paragraph of Article 26 of the law on asylum in Romania

The above-mentioned situations regarding the fulfillment of the term “serious risk” for a person to be entitled to the request for protection are clear and do not raise any questions. However, another is the situation when an applicant for a form of protection is sentenced the death penalty or the execution of such a punishment. Here are some doubts as to the interpretation of this point, and some research needs to be done to answer some questions, namely: Under what conditions can a person sentenced to the death penalty receive protection?, Is it possible for a person to receive protection even if he has committed deeds in cases of exclusion and was sentenced to death?

In principle, it can be determined whether or not a person sentenced to death can receive protection only after the situation has been analyzed and whether it is a serious offense or not. The designated authorities have an obligation to verify the circumstances in which the offense was committed and the seriousness of the offense. The capital punishment is applied so far in some countries. In addition to serious crimes such as murder, rape or betrayal, drug trafficking is punished with death in 32 countries. There are also facts that we would not expect to be punished so hard. For example, in most Muslim countries, sexual offenses are punishable by death. For example, in Yemen a person can be sentenced to death for adultery, and in Bangladesh for pimping. Homosexuality is being punished with death in several Muslim countries, and in Saudi Arabia the death penalty can be waged for witchcraft. Businessmen have to be very careful in Vietnam and China, where embezzlement is punished with death, as well as corruption and bribery in Thailand and China.²

The comparative analysis shows that an asylum seeker who has committed an offense punishable by death before entering the territory of Romania can obtain subsidiary protection. Obtaining protection in these situations is conditioned by the gravity of the offense and the circumstances in which it was committed. If we take into account the examples of Yemen, Bangladesh, Saudi Arabia, which are

¹ Art. 3, 5 of the Universal Declaration of Human Rights and Art. 2, 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

² <http://www.romanalibera.ro/actualitate/international/unde-si-pentru-ce-poti-fi-condamnat-la-moarte-315363>

punishing with death some of the facts considered as serious crimes on the territory of these countries, we can say that the applicant is entitled to ask for protection, especially since the deeds described do not present serious criminal offenses and no social danger in European countries. Moreover, facts such as adultery, homosexuality and witchcraft are not considered as crimes in the national law.

The answer to the second question, which relates to the possibility of obtaining subsidiary protection by an applicant sentenced to death, but falls within the exclusion cases provided for in the Convention in Art. 1 letter F¹, will definitely be negative. The first reason for refusal is focused on the context of asylum rules. Even if an applicant at first instance would qualify for inclusion, namely the reason for the death sentence, he would be excluded after the analysis of the facts. In general, all rules on asylum are specifically designed to protect victims, not to protect perpetrators. Another reason for denying the grant of subsidiary protection can be derived from the Convention for the Protection of Human Rights and Fundamental Freedoms which, while proclaiming that the right to life is protected by law, comes with an argument in favor of causing a person to die intentionally only in situations in which has them executing a sentence passed by a court, when the offense is sanctioned with this punishment by law.² The evidence to support the above is Law no. 10 of the Control Council for Germany of 20 December 1945 and the Statute of the International Military Tribunal. Both documents provide for some offenses for which capital punishment can be applied (Annex 4). The 1951 Convention refers to these offenses when determining the grounds for exclusion from any form of protection.

Thus, having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, which recognizes the death penalty, provided that it is delivered by a court, we conclude that a person who has committed crimes of the kind referred to in Article 1 F of the 1951 Convention could receive subsidiary protection by giving cause for death as a reason, because in these situations prevails the deeds committed and the punishment legally established for them. Thus, an applicant cannot claim to be in danger due to a death sentence passed by a court following war crimes, crime against peace or humanity as defined in the international instruments on such crimes.

2.3. Granting Temporary Protection

This last form of protection is granted only in exceptional cases. If refugee status or subsidiary protection is granted following an individual file analysis, meaning that protection can be provided to one person and then to his / her family upon request, then temporary protection refers to a group of persons who are in the same situation the person would urgently need asylum. The Council Directive 2001/55/EC³ of 20 July and Law no. 122 of 2006 on asylum in Romania provide that “*temporary protection*” means “*an exceptional procedure designed to ensure, in the event of a massive influx or imminent inflow of displaced persons from third countries who cannot return to their country of origin immediate and temporary protection of such persons, in particular where there is a risk that the*

¹ This article refers to cases of exclusion from protection:

the provisions of this Convention shall not apply to persons on whom there are serious grounds for believing:

(a) they have committed a peace crime, a war crime or a crime against humanity, within the meaning of international instruments designed to provide provisions on such crimes;

(b) have committed a serious common law offense outside the receiving country, before being admitted by that person as a refugee;

(c) that they have been guilty of acts contrary to the purposes and principles of the United Nations.

² Article 2, paragraph 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms.

³ This Directive concerns the minimum standards for granting temporary protection in the event of a mass influx of displaced persons and measures to promote a balance between Member States' efforts to receive such persons and to bear the consequences of such reception.

asylum system will be unable to manage this flow without adversely affecting its effective functioning in the interests of those concerned and other persons who require protection”.

So, by definition, temporary protection is provided in special cases where states are forced to receive a massive influx of people and are at risk of having problems when managing this influx. Of course, according to the Directive, the requesting group must fall within the scope of art. 1 A of the 1951 Convention, but also provides for other situations of temporary protection such as leaving an area of armed conflict or endemic violence or being exposed to major risks as well as victims of systematic or generalized violations of human rights. This type of protection may be granted for a period of one year with the possibility of automatically extending that period for a period of 6 months or a maximum of one year, in cases where the reasons for granting temporary protection have not ceased.

Finding a massive flow of displaced persons is determined by a decision of the European Union Council. Of course, the signatory states will be able to receive persons who are eligible for temporary protection only after the Council of the European Union and the European Commission - in figures or in general terms - communicate their capacity to receive such persons. The Directive also provides that States that can receive a larger number of people than previously announced will again notify the Council and the Commission of additional reception capacities. However, the situation faced by the European Union has recently been overcome by forcing Member States to take a far greater number beyond their possibilities. This was allowed by the Directive by art. 25 par. (3) which states that “*in cases where the number of persons who may benefit from temporary protection following a massive influx exceeds the reception capacity referred to in paragraph 1, the Council shall urgently examine the situation and take appropriate action, including recommending additional support to the affected Member States*”.

Thus, in order to overcome the crisis caused by the excessive number of displaced persons and who cannot return to the country of origin, the resettlement of refugees was established at the level of the European Union through two mechanisms of refugees' quota. The quotas established by the first resettlement mechanism in July 2015 in Brussels were made on the basis of Art. 25 par. (1) of the Directive in which states were able to indicate their ability to receive such persons. For example, at this stage Romania presented a figure of 1,785 refugees, with the arrival of a number of 1,705. Until this moment, we would be tempted to say that the Romanian state has complied with its obligations under the Directive and that the country's economic situation and its ability to receive a certain number of refugees should be considered, however, taking into account the fact that, the odds were almost exceeded by almost 200 people. Romania has only 6 functional centers for refugees and asylum seekers, which can accommodate only 1500 people.¹

However, the crisis of the massive refugee flow has not been overcome, the European Union has to confront a huge wave of people seeking protection. Greece and Italy were the most affected by the geographical location being the first states of the Union to enter the sea. In order to support the affected Member States, the Council of the European Union establishes binding quotas through the second allocation mechanism in September 2015, thus spurring among Member States, as not all have agreed to these binding quotas. In this respect, Romania has a final quota of 6,351 refugees at this time. According to the information sources, the second mechanism for relocation of 120,000 refugees is to be carried out in two stages, two years, in the first year Romania will receive 2,475 refugees, in addition to the 1,705 agreed by the first mechanism. In the second year, according to the agreed rates,

¹ <http://www.gandul.info/stiri/primii-refugiati-au-ajuns-in-romania-marea-problema-pe-care-tara-noastra-trebuie-sa-o-rezolve-pana-la-anul-15095267>

but which can be changed, there are 2,171 refugees left to receive. The other states will receive refugees in the first part of the relocation mechanism according to the tables in Annex 5.

In spite of all efforts to close the immigration route from Turkey to Greece, the “International Migration Organization” reports on the increase in the number of immigrants in this way, and this time there are signs of an increase in the number of people in Sub-Saharan Africa¹. Taking into account that all immigrants want to reach the European Union, there is the possibility of establishing a permanent mechanism for the resettlement of refugees and thus establishing binding quotas as proposed by Germany to the European Council in October 2015². Will it be accepted or not the establishment of this permanent resettlement mechanism? It remains a question mark. It is certain that some states of the Union, including Romania, are opposed. In our country, the prime minister declared firmly in March 2016 that Romania maintains its position of not accepting mandatory refugee reception rates.³

The A.V. Case from Iran

History: A.V. is from Iran, left his country of birth at age 7, grew up in Romania with his whole family. The father and one of the sisters are Romanian citizens, another brother is a student, a Romanian scholar, most of the other members of the Iranian family being killed because they lived on the border with Iraq. He felt attracted to Christian religion, studied the Bible, and after a while he became Christian. In the event of return, he could be killed because he changed his religion. He cannot extend his / her right of residence according to the law of aliens because he / she does not meet the conditions.

By analyzing comparatively the statements made in the course of the proceedings, the court found that the reasons invoked are not likely to lead to the granting of refugee status, as the applicant has not shown that his fear of persecution for one of the five considerations set out in the law is well founded.

From the information obtained about the country of origin, it is clear that human rights are frequently violated by the authorities, but the general situation cannot justify the granting of refugee status itself, the applicant having to invoke individual persecution.

With regard to the episode of Christianity, it was seen as not to be sincere, but merely an attempt to determine the granting of a form of protection, especially since the event took place after the rejection of the application for recognition of refugee status at the administrative stage. Furthermore, the applicant did not explain how this episode could have been brought to the attention of the authorities of the country of origin.

Addressing the case in the light of the provisions of Article 5 of the Ordinance, the court considered that the return of the applicant to the country of origin may be inhuman treatment, in the broad sense of this notion, to the fact that his whole family is in Romania (parents), and in Iran, he has no close relatives or social relationships with other people, since he has been here since he was 7 years old and for 13 years.

Article 8 of the European Convention on Human Rights, which enshrines the right of every individual to respect for private and family life, can be considered to be infringed and the interference of public authorities is permissible only in so far as it tends to protect the values expressly protected by the text.

¹ <http://www.agerpres.ro/externe/2016/04/22/oim-fluxul-de-imigranti-din-turcia-spre-grecia-incepe-sa-creasca-din-nou-15-50-32>.

² <http://cursdegovernare.ro/europa-ar-putea-institui-un-mecanism-permanent-de-relocare-a-refugiator.html>.

³ <http://www.aktual24.ro/ciolos-ramane-ferm-declaratii-la-paris-romania-nu-accepta-impunerea-de-cote-de-refugiati/>.

The applicant has a real family life in Romania and his return would violate Article 8 of the ECHR as it could be considered as an uprooting that may create adaptation difficulties and real obstacles (see also the jurisprudence of the European Court of Human Rights *Beldjoudi v. France*).

As a result, the complaint was admitted and to the applicant it was granted conditional humanitarian protection under Article 5, letter (b) of the Ordinance.

The J.M.A. Case of Palestinian Nationality

History: J.M.A. is a Palestinian national, came to Romania in 1996, benefiting from a tourist visa applied to a Lebanese travel document with a validity of 5 years, the validity of which expires. He lived with his family in a camp of Palestinian refugees on the outskirts of Beirut, was involved in an incident with a Syrian soldier, lived with an aunt and came to Romania. He married here, took his wife, and returned to Lebanon in 1997 for only three months because he did not feel safe there. He returned to Romania, where he lives with his wife and two children.

It was considered that the applicant did not meet the positive criteria for recognizing refugee status, the incident, with the Syrian soldier being a singular event, taking into account the situation and status of Palestinian refugees in Lebanese camps.

Examining the case in the light of the provisions of Article 5 of the Ordinance, it may be appreciated that the applicant is part of a disadvantaged category of persons exposed to hazards that could harm his life, physical integrity or freedom. Thus, he is a Palestinian refugee, lived in a refugee camp on the outskirts of Beirut where Syrian soldiers are present as a result of the agreement between Lebanon and Syria, and they are involved in controlling Palestinian activity.

The information provided by international organizations confirms that Palestinian refugees from Lebanese camps are deprived of a number of rights, such as the right to acquire citizenship, he cannot receive permanent work permits, they are arbitrarily arrested, harassed and they are not assured, in general, optimal conditions for integration.

It can therefore be considered that the applicant is exposed to the dangers of return and, moreover, would violate the right to a family life within the meaning of Art. 8 of the ECHR, all the more so since he tried to live with his wife in Lebanon but did not feel safe and returned to Romania. (Cristuș, 2005, p. 53)

3. The Conditions for Obtaining a Form of Protection

In order to obtain one of the three forms of protection, the asylum seeker must meet the conditions mentioned above which are listed both in the explanation of the term refugee in the 1951 Convention and in the national legislation on the legal status of this category of natural persons, as well as the conditions listed in the definitions of subsidiary and temporary protection. Thus, the applicant for international protection must be in a situation that generates well-founded fear of being persecuted on the grounds of race, religion, nationality, political opinion or belonging to a particular social group. In this case, the international norms and, subsequently, by transposition, the national ones do not differentiate as to the situation where the asylum seeker belongs to a state or is a stateless person. According to them, *“in the case of persecution, everyone has the right to seek asylum and to enjoy asylum in other countries.”*

However, the same protective rules contain provisions on some persons who, while fulfilling the necessary characteristics laid down in Article 1A of the 1951 Convention or the provisions of subsidiary and temporary protection, are excluded from the grant of refugee status. These people are divided into three categories:

1. *Persons already receiving protection or assistance from the United Nations*¹;
2. *Persons not deemed to require international protection*²;
3. *Persons who are considered not to deserve international protection*³.

The Convention briefly lists ***the situations in which an applicant may be excluded*** from granting refugee status, leaving it to the States to interpret and extend the negative conditions as provided, for example, for the second category. In this case Art. 1 E of the 1951 Convention provides that “*it shall not apply to a person considered by the competent authorities of the country in which that person has established his residence as having rights and obligations relating to the possession of those countries*”. Thus, the competent authorities are allowed to analyze objectively the situation of the asylum seeker and to decide whether or not he or she needs refugee status as a form of protection. This clause only refers to the person who has “resided” in the country from which he / she requests protection, meaning his / her continuous stay and not just a simple visit. Of course, the provision in question does not affect a person who lives in another country and therefore does not enjoy the protection of the country to which asylum is sought. In addition to the respective category, the Romanian legislator comes with another case of exclusion from the international protection of an asylum seeker stipulated in art. 25¹: “*In the process of analyzing the asylum application, the competent authorities may determine that the applicant does not need international protection in Romania, when in a part of his / her home country there are no good reasons to be exposed to acts of persecution or serious risk, or when he or she has access to the protection of such acts.*” Here, for example, the recent situation in Ukraine where armed conflicts took place only in some pro-Russian regions of the country. The civilian population can be protected in its peaceful areas. However, it is often not easy for the authorities designated to study these issues to make a decision in this direction. In such situations, it will be determined whether the person requesting protection can travel safely to that part of the country and that he will not be subsequently persecuted for other reasons. For example, if a pro-Russian solicitor would be safe in that part of the country where peace is in place, but the native population supports an aggressive policy against the Russian state, then there is a risk that the applicant will be persecuted because of political opinions or a particular social group.

Another group of persons excluded from the application of the Convention but fulfilling the necessary characteristics to be granted protection are those who already benefit from protection or assistance from a United Nations body or institution other than the United Nations High Commissioner for Refugees. Examples of such protections by UNKRA are currently being replaced by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Of course, these agencies provided protection to certain individuals who were in the territories in which they were operating. Regarding refugees in Palestine, to which UNRWA refers, it will be remembered that the agency operates only in some Middle Eastern countries, thus granting protection or assistance only in those countries. In this case, the Convention excludes from the international protection persons who are protected in that area. However, the second paragraph of Art. 1 D also contains an inclusion clause, which provides for the legal protection of those refugees who do not have a regulated definite

¹ Convention of 28 July 1951 on the Status of Refugees, Art. 1D.

² Convention of 28 July 1951 on the Status of Refugees, Art. 1E.

³ Convention of 28 July 1951 on the Status of Refugees, Art. 1F.

status. If we take the example of a Palestinian situation outside UNRWA's operations area, we conclude that it does not benefit from protection or assistance from any body or agency, thus ending the protection as provided for in the second paragraph of Art. 1 D and consequently the person will be entitled to benefit from the protection offered by the Convention.

The last category of people excluded from granting protection refers to those who do not deserve international protection. Article 1 F states that: "*The provisions of this Convention shall not apply to persons who have serious grounds for believing:*

a) that they have committed a crime against peace, a war crime or a crime against humanity, in the sense of international instruments designed to provide provisions on such crimes;

b) that they have committed a serious common law offense¹ outside the receiving country before being admitted to it as refugees;

c) That they have been guilty of acts contrary to the purposes and principles of the United Nations."

The fact that the Convention was drafted in a period relatively close to the end of the Second World War made, it rendered the memory of the trials against the great war criminals. States Parties have decided to exclude the possibility of a war criminal to receive international protection, expressing their wish not to receive in their territories and to provide asylum for such persons. The decision whether or not to apply these exclusion clauses rests entirely with the signatory State on whose territory the applicant applied for recognition of his / her refugee status. As regards the letter "a" of that article, which excludes peacekeepers, those who have committed a war crime or a crime against humanity, the Convention refers to "*the international instruments developed to provide provisions with regarding these crimes*" precisely to exclude a possible error in the process of understanding the terms of the mentioned offenses. Since the end of the Second World War, a large number of instruments referred to in the Convention have been drafted, all of which contain definitions to explain what these crimes are. The most comprehensive definitions are set out in the 1945 London Agreement and the Statute of the International Military Tribunal.

As regards the letter "b" in Article 1 F of the Convention, the Romanian legislator does not expressly use the term "crime" to define an offense. However, crime is an offense against life, having the same meaning as "murder". Thus, when transposing the norms established by the 1951 Convention, the legislative power did not also take over the term "crime", replacing it with the "offense" which, as stipulated by the Romanian criminal law, is "*the deed stipulated by the criminal law, committed at fault, unjustified and imputable to the person who committed it.*"²

When applying the exclusion clauses, it is required to take into account the nature of the alleged offense committed by the applicant and the statutory provisions of the status to which protection is required, the conditions under which the deed was committed and the psychological attitude.³

¹ It is difficult to define what constitutes a "serious crime" of common law under these exclusion clauses, especially since the term "crime" has different connotations in different legal systems. In some countries the word "crime" denotes only serious crimes. In other countries, he can designate something else, from simple theft to murder. At the same time, a "serious" crime must be the murder or another offense punished by very severe law. "UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 46.

² Art. 15 of Criminal Code.

³ In the process of determining refugee status, UNHCR provides in its Recommendation Manual on Procedures and Criteria for Determination that "*it is necessary to analyze the nature of the crime or alleged crimes in order to determine whether or not the applicant for refugee status is not in reality a person who escapes from justice or his criminal character, which it*

However, there cannot be excluded under Art. 1 F (b) the persons who have committed minor offenses even if, technically, the country to which they are applying for asylum qualifies them as criminal offenses in their criminal law.

The clause providing for exclusion for committing acts that are contrary to the purposes and principles (Annex 3) as they are listed in the preamble and in art. 1 and 2 of the Charter of the United Nations overlap with that of art. 1 F (a), being clear that the facts provided in this article are contrary to the purposes and principles of the United Nations. While Article 1 F (c) does not specifically introduce any new elements, it is intended to cover in general terms the acts that are against the purposes and principles of the United Nations, which could not be fully covered by the two previous exclusion clauses. Considering the paragraph (s) in relation to the two preceding clauses, it must be accepted, even if it is not expressly stated that the acts endorsed by this paragraph must also be of a criminal nature. However, there is almost no precedent on the application of this clause which, due to its very general nature, should be applied with caution.¹

Also in the category of those who do not deserve international protection, the Romanian legislator includes those who have planned, facilitated or participated in the commission of acts of terrorism and activities that could endanger national security.

Kaya's Case against Romania

The factual situation essentially concerns the fact that, in April 2005, the applicant Saban Kaya, a Turkish citizen of Kurdish origin, established in Romania since 2000, having a Romanian wife, was declared undesirable by an order of the prosecutor in the Prosecutor's Office attached to the Bucharest Court of Appeal, while at the same time forbidding his / her right to stay on the Romanian territory for a period of 15 years, on the grounds that there was good information and evidence that he was carrying out activities that could danger the national security.

The applicant was detained by the police on 18 April 2005 and then deported to Turkey. Against the order, the applicant filed an appeal, which was dismissed as unfounded by the Bucharest Court of Appeal.

The Court found a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms which guarantees the right to respect for private and family life, as a result of the fact that the interference of the authorities was not provided for by a law corresponding to the Convention's requirements, considering that the applicant did not enjoy the minimum degree of protection against the authorities' arbitrariness, neither before the administrative authorities nor in the appeal of the Court of Appeal.

The Court also held the violation of Art. 1 of the Additional Protocol No. 7 to the Convention, which refers to procedural guarantees in the case of expulsion of foreigners, since the investigation exercised by the Court of Appeal in the judgment of the applicant's appeal was purely formal, especially since the authorities did not communicate the slightest hint of the facts imputed to him, the order by which he was declared undesirable by being communicated to him by the Prosecutor's Office only on the day

does not weigh more than a good-faith refugee"; "In assessing the nature of the alleged murder, all relevant factors must be taken into account - including any circumstances -."

¹ UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 48.

of the hearing, and the Appeal Court dismissed Mr Kaya's defense request regarding postponing the case, so that the accused would study the prosecutor's order.

At the same time, the Court rejected as being inadmissible the claim for violation of art. 5, par. 1 letter f), 6 & 1, 16 and 4 of Protocol no. 4 of the Convention on the right to liberty and security, the right to a fair trial, restrictions on the political activity of aliens and the prohibition of collective expulsion of foreigners.

The Lupsa Case against Romania

The European Court of Human Rights in Strasbourg ruled against *Lupsa v. Romania*, finding a violation of art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to respect for private and family life, as well as art. 1 of Protocol no. 7 of the Convention which deals with procedural safeguards in the case of expulsion of aliens.

The factual situation essentially concerns the fact that, in August 2003, the applicant, a Serbian - Montenegrin citizen who had settled in Romania since 1989, having a minor child, was declared undesirable by an order of the prosecutor, while at the same time enjoying the right to remain on Romanian territory for a period of 10 years, on the grounds that there was good information and evidence that he carried out activities that could endanger the national security.

The Court found that this measure was an interference with its right to respect for private and family life. As regards the legality of the expulsion and the prohibition applied, it was established that G.E.O. no. 194/2002, which constituted the basis for the expulsion of the applicant, did not give him the minimum guarantees necessary to prevent the arbitrariness of the authorities, especially since, contrary to the internal rules, the ordinance declaring it undesirable was not communicated to him and the prosecution was never triggered against the applicant.

On respecting the procedural guarantees stipulated by art. 1 of Protocol no. 7 in the case of expulsion by foreigners, the Court reiterated the arguments presented at art. 8 regarding the absence of minimal guarantees against the arbitrariness of the authorities. The claim for breach of the right to a fair trial and the right to an effective remedy were rejected as inadmissible.

The UNHCR also provides some special refugee status cases in its recommendations, even if people forced to leave their country of origin are not normally considered to be refugees under the 1951 Convention (p. 49).

- a) **War refugees** whose situation has been analyzed in the section on subsidiary protection;
- b) **Deserters and persons refusing military service** - obviously, a person cannot be granted refugee status if he has deserted for avoidance of embarrassment or fear of fighting. However, such a person, even if he evades military service for other reasons, may be a refugee if it can be shown that he would be punished with severe punishment in relation to the military offense committed by reason of race, religion, nationality, belonging to a particular social group or political opinion; satisfying military service would require its participation in military action contrary to its true political, religious or moral convictions or valid reasons for conscience; the refusal to perform the military service can also be based on religious beliefs, but on the condition of showing that such beliefs are real.

4. Conclusion

In this paper, after thorough research, we have been able to provide information on the principles and guarantees enjoyed by an applicant for protection as well as the forms of protection, as well as the conditions under which a person is entitled to seek protection or the cases of exclusion of an asylum seeker in general. The differences between the forms of protection have also been explained, concluding that an asylum seeker may be an emigrant, but an emigrant cannot always be a beneficiary of a form of asylum protection. So a person who voluntarily migrates without having to fear for his life because of the war or the fear of being persecuted for some reason will not receive any form of protection in this area. Consequently, the term “refugee” differs from “migrant”, the former being a form of protection obtained under certain conditions, and the second includes all the persons leaving their place of origin regardless of the cause, whether forced or voluntary.

As for the forms of protection, following the analysis of international and national norms, three types were extracted, and we managed to clarify the similarities and differences between them. For example, the difference is given by the conditions of obtaining a certain form and the cases of exclusion being the same for all types of protection, which makes them similar.

Another dilemma responded to in this study was that not every asylum seeker can receive one of the existing forms of protection. Some clarifications have been made to answer who can receive protection and under what conditions. Thus, both inclusion and exclusion cases from the receipt of protection by an asylum seeker are also examined, and some examples of judicial practice are also presented.

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