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**The Current Situation in Romania and the Role of Asylum within the Institutional Mechanism for the Migration Phenomenon Management**

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**Abstract:** The paper aims to analyze in an inter-disciplinary manner the tendencies and causes of the increase of the migration phenomenon, as well as the measures taken at the level of Romania regarding the immigration and asylum policies, which have led to the decrease of the number of immigrants. Also, the analysis of the procedure for granting the statute of asylum represents an important objective of the paper. The methodology chosen and the selected legal documents enabled some form of understanding as to how European and national Institutions perceive the concept of asylum and its problematic.

**Keywords:** refugee; asylum; transit; procedures

## 1. Introduction

The amplification of the cooperation between the states and of international collaboration have determined the increase of the fluctuation of persons, citizens of different states thus settling for different periods of time on the territories of other states. According to article 13 of the Universal Declaration of Human Rights, proclaimed and adopted on December 10<sup>th</sup>, 1948, “Everyone has the right to freedom of movement and residence within the borders of each State”. Also, in the second paragraph of the same article, it is mentioned that “Everyone has the right to leave any country, including his own, and to return to his country”. According to the estimates of the International Organization for Migration<sup>1</sup>, there are approximately 185 million migrants at the level of the entire world. However, the majority are in the situation of leaving their state of origin, in search for a better life or attempting to escape physical or political oppression in the country where they were living. The concept of migration is defined as “a person’s mobility across the borders of states, mobility which has as finality the temporary or permanent settlement on the territory of a state, other than that of origin”<sup>2</sup>.

However, immigration represents a complex and dynamic phenomenon, influenced by a multitude of factors, both from the countries of origin (push factors), and from the destination countries (pull factors). That is why it is necessary that the national policy in the field be permanently updated according to the new evolutions at the regional and international level.

<sup>1</sup> According to the World Migration Report 2005: Costs and Benefits of International Migration, International Organisation for Migration, [www.iom.int](http://www.iom.int);

<sup>2</sup> Marian Chiriac, Monica Robotin “*Necunoscuții de lângă noi – Rezidenți, refugiați, solicitanți de azil, migranți ilegal în România*”/ “*The strangers around us - residents, refugees, asylum seekers, illegal migrants in Romania*” – report executed in 2006, within the program „Minority Rights in Practice in South Eastern Europe”;

Becoming involved in the immigration process, the states adopt policies that outline the borders of the community and its quality as member thereof. The policies regarding immigration target a person's transit on the territory of a state other than that of origin, targeting especially the persons intending to work or to settle on the respective territory; thus, it is targeted a redefining of the manner of organizing the community in what concerns the ability to include newcomers. If until 1992 the problem of migration and refugees was in the sole care of each state, with the entering into effect of the Maastricht Treaty and the Amsterdam Treaty, the policies regarding migration, asylum, freedom of movement of persons and visas became responsibilities of the Community.

At the Tampere Summit in October 1999, the European Council decided that asylum and migration, although separate fields, but connected as approach, require the development of common policies. In supporting this decision, in year 2005 was adopted the Hague Program for strengthening freedom, security and justice, which represents a programmatic document of the Member States, which establishes the guiding lines in the field of justice and internal affairs for the period 2005-2010, special importance being granted to immigration, asylum and the social integration of aliens legally living on the territory of the European Union, and in year 2006, was elaborated the Solidarity and Management Program for the migratory flows for the period 2007-2013.

On October 16<sup>th</sup>, 2008, the heads of state and government within the European Union adopted in Brussels the „European Pact for Immigration and Asylum”, which comprises five great commitments of the European states:

1. Europe's protection by means of controlling its borders in a solidarity spirit;
2. Organizing the legal migration in harmony with each member state's capacity to receive immigrants and in a solidarity spirit;
3. Organizing of the selective repatriation of illegal aliens;
4. Construction of an Europe of asylum;
5. Promotion of the development of the countries of immigration.

Thus, we can say that migration is considered at present a multi-national process, which can no longer be managed (solely) unilaterally or bilaterally.

All these have presupposed another attitude of the countries involved with respect to the migratory flows<sup>1</sup>:

- a. on the one hand, an open policy for migration, for the purpose of covering the low qualified workforce deficit (with certain quantitative barriers, set depending on the size of the deficit and materialized in the contingent flows on trades and professions) and of intensifying the temporary/definitive attraction of „brains” for sustaining progress by means of performing technologies, hence by top-training workforce (manifested through the development of competition between receiving states, for the attracting of personnel, which to cover the high-competence deficit).
- b. and on the other hand, a common policy for the control of the migratory flows and for combating illegal migration and illegal employment of aliens (including by means of an intensified cooperation between the states)

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<sup>1</sup> Study “Immigration and Asylum in Romania, year 2006”, Bucharest, 2007, p. 5.

This approach is currently undertaken by the European Union Member States. After almost 30 years of restrictive immigration and asylum policies, the governments of the EU states have started talking again about the benefits of the migration workforce and to take new measures regarding the migration of this workforce.

An analytical approach of the migration phenomenon in its entirety leads to the conclusion that all measures and tendencies are based, in the widest majority, on popular hysteria and not on an objective evaluation of the situation of facts. They start from a pressure created by public opinion, as a consequence of the manner in which the immigration phenomenon in these countries is affecting the individual's interests. The arguments brought forth in supporting these measures consist of: increase of the number of aliens, of the presence in the press of events or facts committed by immigrants, the idea that foreigners are a danger to the domestic labour force and contributes to the creation of a climate of insecurity, black labor and other criminal aspects specific to migration, in general – persons trafficking, drug trafficking, prostitution and pimping and others, and newer, the threat of terrorism. Another element of a nature to contribute to the adoption of such a position towards the immigration phenomenon is that there is no clear distinction being made between illegal migration, towards which severe measures must be taken, and migration in general, as objective and implacable phenomenon.

It must be mentioned the fact that all measures taken at the level of the Western states on the line of visa policy, border control, asylum and immigration, have not lead to a decrease in the number of immigrants, but, at best, contributed to a slowing of the increase of this number. It is thus noticed that in order to decrease migration other methods must be considered, other measures taken by a coalition of states, in order to have effect. Paradoxically, the analyses made at the European level reveal the need for immigration starting from the decrease of the birth rates and the increase of life expectancy, concomitantly with the needs generated by the economy of these countries and the needs of the social security system, which deepens the dilemma of the responsible persons in these countries. Considering the data presented, the analysis at hand targets to underline the need of approaching the immigration issue on the basis of the analysis of the objective situation in our country, and not by the simple acceptance of the currents existing in other states. The fact that in Romania immigration does not constitute an element of concern and frustration for the public opinion, allows the performing of an approach that serves the national medium and long term interests, which uses to the maximum the advantages of immigration and which leads to the creation of advantages, in the conditions in which this phenomenon is happening anyhow. The aspects revealed above do not exclude the adoption of a firm line in what concerns the visa policy, the border control for combating illegal migration, asylum and immigration, and the criminal spectrum that characterizes this phenomenon.

## **2. The Historical Evolution and the Current Situation in Romania**

As European Union Member State, Romania had to align to the European standards and to perform its activity in the field of immigration in full accordance with the position of the other states.

If in the past Romania had, mainly, a role of transit country for the migratory flows coming from the Eastern states in their way towards the Western states with high economic development level, at present, Romania is also becoming a destination country.

In the first years after adhering to the Geneva Convention of 1951 and to the New York Protocol of 1967, the asylum procedure in Romania was performed through the Technical Secretariat of the Romanian Committee for Migration Issues, within the Ministry of Labour and Social Solidarity, and

the decision on the petition for granting the statute of refugee belonged to a Decision Commission, composed of representatives of the Ministry of Foreign Affairs, Ministry of Interior and Ministry of Labour and Social Solidarity. The Commission members were performing their activity by addition of functions and they met only once a week. This made the procedure last very long, for some cases even 2 or 3 years. In the meantime, many files were left unsolved, simultaneously with the increase of the number of applications. The efforts made in the period 1998 -1999 lead both to the increase of the procedure quality, and to the recovery of the back-lag with great additional efforts, by increasing the number of the commission's weekly meetings.

A series of measures of practical order were taken for the shortening of the procedure during the administrative stage, and by achieving food cooperation with the courts of law competent to settle asylum application, the judicial procedure was shortened, as well. Special attention was given right from the beginning to the problematic related to the admissibility of the asylum applications, meaning to the weight of the number of applications settled favourably. The principle established was that the analysis is performed individually for each case and with respect to the definition of the protection form.

The very high admissibility rate in years 1998 and 1999 is due to the fact that during that period old files were analyzed, the admissibility rate being computed as ratio between the number of applications solved and the number of applications submitted during that year.<sup>1</sup> The fight against illegal migration constitutes a requirement for the preservation of national security and the public order of any state. At the same time, the commitment to this fight constituted an obligation towards the international community, inaction producing effects not only for the state in question, but also for the other states in the region (is known the position of certain member states within the Sevilla Summit, to apply sanctions against third states which do not take measures for combating illegal migration or even encourage this phenomenon). Still, the measures of the authorities can only be taken with the observance of the obligations undertaken through the treaties and conventions to which it is part, namely with the observance of the rights for these categories of persons.

That is why the new legislation in the field of asylum establishes the right of any alien to have access to a correct and efficient asylum procedure and to not be returned except in case of an executive decision to reject his/her application. These fundamental rights granted by the asylum procedure have constituted an attraction element for certain categories of migrants, who use this procedure in order to extent their legal stay on the territory of a country of for obtaining a form of protection and of making they stay permanent. In reply, at the European level, a set of measures was developed, through the adoption of community documents which to achieve a balance between the observance of the human rights and the authorities' possibility to combat, in an efficient manner, any form of abuse to this procedure. The documents of the EU *acquis* regarding the policies in the field of migration and the common positions adopted by the ministers with duties in the field of migration in the EU member states include also asylum, both under the aspect of observing human rights, and as an efficient means of control and combating of illegal migration.

The evolution of the asylum system in our country, the adoption of certain legislative, institutional and practical measures have lead to the obtaining of result and, in some aspects, have foreseen certain policy changes at the European level, in this field.

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<sup>1</sup> Data offered by the Documentation Center within NOR.

Thus, after the adoption of the first legislation and the creation of an institutional mechanism with competences in the field, in year 1992, there followed an increase in the number of asylum applications of more than 50% in year 1993. An even higher increase of the number of applications occurred after the implementation of Law no. 15/1996 regarding the statute and regime of refugees in Romania, presently abrogated, while the highest increase was registered in year 2001, after the implementation of Government Ordinance no. 102/2000 regarding the statute and regime of refugees in Romania, with all subsequent modifications and completions (abrogated). Every time, these spectacular increases of the number of applications were followed by period of setback, during which the number of asylum-seekers decreased, as a consequence of the manner in which the new regulations adopted were put into practice. The fact that Government Ordinance no. 102/2000 and the implementation legislation contain a series of restrictive measure, for combating abuses, is also demonstrated by the fact that, last year, the number of asylum applications had a larger decrease, proportional to the other two moments of setback, existing the possibility that, for the first time, this decrease to record values lower than those prior to the top moment, namely values lower than those recoded during year 2000<sup>1</sup>.

Through Government Ordinance no. 102/2000 and Government Decision no. 622/2001 for the approval of the Methodological application norms (abrogated) a series of measures were introduced, which to lead to the sanctioning and discouraging of abuse, maintained through Government Ordinance no. 41/2004. These measures consist of:

- Limiting the procedure duration both during the administrative stage, 30 days with the possibility of extending it by another 30 days, in order to perform additional verifications, and in the judicial stage, 30 days the petition and 30 days the recourse. Thus, the duration of the administrative procedure was, in over 96% of the cases, of 30 days and even less, and the average duration for the complete procedure for solving an asylum application was of 3 months;
- Defining the concept of obviously ungrounded application and the introduction of the accelerated procedure, which allows the solving of an obviously ungrounded application within 20 days;
- Solving in accelerated procedure or with maximum speed the applications submitted by persons who were found with illegal stay, persons for who final decisions were rendered in criminal cases, with the safety measure of expulsion or persons declared undesirable by order of the minister of administration and interior, as well as any other persons using the asylum procedure for the purpose of obviously preventing a measure of taking out of the country;
- Defining in a distinct manner the forms of protection – statute of refugee, humanitarian conditioned protection and temporary protection; this allows a strict evaluation of cases according to the provisions of the international documents; in practice, these definitions have been applied through the individual assessment of each case, without making general interpretations – prima facie – according to which, if a certain geographical region or a certain category of persons is considered of risk, then, automatically, all persons in that region or group are refugees;
- Eliminating the possibility of granting the right to reunite the family for those who were married after entering on the territory of the main applicant; through this measures, it was targeted the elimination of the possibility of marriages of convenience, especially between persons with different countries of origin;

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<sup>1</sup> Data obtained from the analyses and situations of the Documentation Center within NOR.

- Introducing a special procedure for the analysis of a new petition for granting the statute of refugee after the rejection, through a decision remained in execution, of a prior application. The inexistence of such a procedure gives the possibility for abuse of procedure, by submitting consecutive applications, which would block the possibility of returning a person, who would thus remain perpetually in the procedure of granting the statute of refugee;
- Adopting lists with countries where, in general, there is no serious risk of persecution and with safe third countries, which allow that, in case of an applicant coming from a country included on the first list, the accelerated procedure could be triggered, in the conditions of the law;
- Provisions regarding the detention of asylum-seekers in the transit area of the border control points and the establishment of a special procedure for such situations;
- Maintaining a low value of the material aids granted to asylum-seekers. Through the legislation adopted, the National Office for Refugees targeted the ensuring of decent accommodation facilities for persons in the procedure of granting the statute of refugee and the assurance of minimum amounts of money, for food. Also, legislația mai prevede posibilitatea de a acorda o sumă de bani pentru cazarea persoanelor în alte locuri decât centrele aflate în subordinea Oficiului. This low level of assistance did not transform the asylum procedure in an attractive modality for providing for oneself and, corroborated with the short duration of the procedure, it has contributed to the maintaining of a low number of asylum applications, even though this was not targeted by the authorities, but was due to the economic situation in Romania. The amounts established by law for the material aid granted to asylum-seekers without means of support is of 25 lei/day/person for food and 15 lei/person/day for accommodation, as well as 5 lei/persons/day for other expenses<sup>1</sup>. For exemplification, the costs related to the support of an asylum-seeker in the Netherlands are the equivalent of 20,000 Euros/month.

The above measures were also introduced in view of harmonizing the legislation with the documents of the EU *acquis* in this field, by means of a strict interpretation, with the observance of the minimum guarantees, and not by taking these provisions as they were established in the legislations of the member states. This interpretation proved to be of a nature to preface the changes occurred in the legislation and practice of the European states, and even to constitute a course of inspiration for these changes. Thus:

- at present, the reduction of the duration of the asylum procedure constitutes one of the main objectives for the authorities of the Western states, within new anti-immigration orientations. In many member states, the procedure takes between 1 and 2 years, in the conditions of a net superior infrastructures and personnel assignment. If in the majority of member states the number of cases/decisional officer is of maximum 100, in our country, in 2001, the average was over 300 cases/decisional officer, in the conditions of a procedure performed within maximum 30 days for more than 96% of the cases (the data refer only to the procedure of solving the asylum applications, not to procedures of pre-admissibility, withdrawal, annulment, cease, extension etc.);
- the majority of the European states took measures for the elimination of the statute of *refuge de facto*, unlike the Romanian authorities, which have always avoided its application;
- in several member states, through the recent change of the policy in the field of migration, was introduced the interdiction to reunite the family for marriages concluded after entering on the territory

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<sup>1</sup> Government Ordinance no. 44/2004.

of the main applicant and the possibility of revoking this right for the persons married on the territory of these states;

- Denmark, through the recent change of the policy in the field of migration, analyzed the possibility to eliminate the right to seek asylum in one of its embassies in a third country. This measure was taken by the Romanian authorities through Government Ordinance no. 102/2000;
- Reduction of material aids for asylum-seekers, the stop in giving money as allowances, aspect which has proven to be of a nature to attract economic migrants in the asylum procedure. The best example is that of Great Britain, which, prior to the modification of the legislation, confronted with a high number of asylum applicants attracted merely by the value of the money support. For this purpose, the Netherlands, through its new policy in the field of migration, intends to reduce the value of the aids for asylum applicants by 90%.

This comparison demonstrates that the manner in which the National Office for Refugees has contributed to the creation of a policy of Romania in the field of asylum and refugees, as composing part of the policy in the field of immigration, in which are observed the obligations undertaken at the international level by means of the legal instruments to which our country adhered and the national interest by achieving a balance between the rights and obligations of these categories of persons. As derived from the above, this policy preceded the attitude changes of the western states and, to a certain extent, contributed as an inspiration source for the measures adopted by them.

### **3. Asylum's Procedure**

Romania's negotiation process in view of its accession to the European Union presupposed a sustained and continuous effort made by the governmental institutions in view of reaching a compatibility level with the member states, at the legislative and institutional level. In this context, the Government of Romania granted special attention to the problematic of immigration, as important part of the field of justice and internal affairs, since our country became a member state at the Eastern border of the European Union. The legislative reform in what concerns the regime of aliens and asylum in our country presupposed the adoption of a set of normative acts, in view of ensuring conformity with the communitarian legislation and with other judicial instruments with international character to which the Romanian state is part. The application of a modern legislative frame imposed the reforming of the institutions with duties in the field, thus obtaining the instruments necessary for putting into practice an efficient management of the immigration phenomenon on the territory of Romania. The progresses are evident and recognized at the level of the European institutions, which, throughout this period, supported the Romanian authorities, through projects that ensured high level expertise coming from the similar institutions of the member states, completed by a consistent financial support for investments in the field. Projects such as the Visa on-line System, the Informatics System for Aliens Management, the EURODAC System, border security, the construction or rehabilitation of accommodation centers for illegal aliens or refugees would have been realized much more difficult without the major contribution of the European Union. In the Romanian legislation, the asylum procedure is established by Law no. 122/2006 regarding asylum in Romania and Government Decision no. 1251/2006 for the approval of the Methodological norms for the application of Law no. 122/2006 regarding asylum in Romania, with its subsequent modifications and completions;

In Law no. 122/2006 regarding asylum in Romania, with its subsequent modifications and completions, is ensured, by defining certain terms frequently used in the matter of asylum and which

pertain to the terminology specific to this field, the concordance with the names used at the European level, to avoid both confusions and different interpretations. Expressly defined are terms such as: form of protection, asylum applicant, application for granting a form of protection / asylum application, alien, country of origin, asylum procedure, statute of refuge, subsidiary protection – which replaced the term of humanitarian conditioned protection, temporary protection, family members, unaccompanied minor, moved persons, massive flow a.s.o.

The law also comprises, expressly, the principles and procedural guarantees applicable in the field of asylum, such as: ensuring access to the asylum procedure for any foreign citizen of stateless person who requests the protection of the Romanian state, non-discrimination on the grounds of race, nationality, ethnicity, language, religion, social category, convictions, sex, sexual orientation, age, handicap, chronic disease, belonging to a less fortunate category, material situation, statute at birth or gained, a.s.o.; non-return – which establishes the fact that against the asylum-seeker there cannot be taken the measure of expulsion, extradition or forced return from the border or from the territory of Romania, the observance of the principle of the family unity, the confidentiality of data and information regarding the asylum application, the observance of the child's superior interest, guarantees regarding unaccompanied minors, the presumption of good-faith.

The principles that are at the basis of asylum granting are: access to the asylum procedure; non-return; non-discrimination; family unity; child's superior interest; confidentiality; presumption of good-faith; removal of criminal liability for illegally entering and/or staying of the asylum applicants.

A person is considered asylum applicant from the moment of his/her manifestation of will, expressed, in writing or verbally, before the competent authorities, from which to derive the fact that he/she is requesting the protection of the Romanian state.

The authorities competent for receiving an asylum application are the following:

- a) Romanian Office for Immigration and its territorial structures;
- b) structures of the Romanian Border Police;
- c) structures of the Romanian Police;
- d) structures of the National Administration of Penitentiaries within the Ministry of Justice.

The asylum application is submitted as soon as:

- a) the applicant presented himself/herself at a state border control point;
- b) the applicant entered the territory of Romania;
- c) events occurred in the applicant's country of origin, which determine him/her to request protection for the alien with the right of stay in Romania.

The asylum applications submitted outside the territory of Romania are not admitted.

The competent authorities cannot refuse to receive the asylum application on the grounds of its late submission.

Many times, asylum was considered a barrier in the fight against illegal migration, a reason of frustration for the authorities with competences in border control or in the control of the legality of the aliens' stay on the territory, because through the asylum applications formulated by those caught in such situations, they were preventing the measures for return or removal from the territory. Such appreciations are not real, and asylum must not be seen as an instrument for favouring illegal migrants, but as a part of the national and international legislation which must be observed in the entirety of



measures taken for combating illegal migration, measures to which the National Office for Refugees contributes substantially.

Thus, the NOR is the only authority to which those who managed to enter illegally or who are illegally staying on the territory come before willingly, are registered, photographed, fingerprinted and released until the procedure completion. Here, it must also be mentioned the integration of the AFIS 2000 system, which allows the identification of those declaring a false identity or who have committed crimes on the territory of Romania or of another INTERPOL member state.

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