

Normative provisions and legal procedures concerning the arrival of refugees in Romania

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Abstract

For the past decades, after the fall of the communist regime, Romanians` emigration has become one of the defining characteristics of this nation`s society. However, following its accession to the European Union in 2007, combined with the massive migration flows arriving on European borders, Romania joined the list of countries that received immigrants. The aim of this paper is to review the legal conditions on receiving and integrating refugees in Romania, by analysing both the normative provisions and the procedures designed to conduct this process. Furthermore, the main centres and facilities created for refugees and asylum seekers in Romania will be presented.

Keywords: *refugees; procedures; Romania; asylum; refugee centres.*

1. Introduction

For the first decades after the fall of the communist regime in December 1989, Romanians` emigration has become one of the defining characteristics of this nation`s society. The developments in the field of international human migration, along with the new regulations Romania needed to follow as member of the European Union enrolled this country in the list of states that also receive various types of migrants, including refugees. Although this situation is not necessarily a consequence of an individual choice made by the refugees, or encouraged by national policies in this field, the legal framework is designed to create a welcoming environment.

According to the conclusions of a study on refugee integration in Romania, “Romania is seen from the very beginning in a dual light: it is a European country, but asylum seekers know little if any about the society prior to arriving here. Most know it is poor, but expect much better as compared to the countries of origin. Peace, political stability and kindness of people are often mentioned as some of the main assets of the Romanian society. Unclear bureaucracy and intricate regulations, along with difficulties to deal with public administration in everyday life are at the opposite side of the spectrum” (Voicu, Deliu, Negut and Tomescu 2018: p. 2).

As one of the most frequent characteristics of modern societies, the unprecedented increase in the phenomenon of migration, is generating a serious increase in the pressure that European Union member states are facing, and, as a result of Middle East events, a series of measures aimed to strengthen solidarity and share responsibilities for EU member states have been discussed and adopted, including sharing these responsibilities with third countries, which host persons in need of

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international protection on their territory. Same as in other fields of action, in the matters of migration and asylum policies, “each of the challenges addressed to the Community can be responded in a series of ways prescribed by the treaties, ways that have, as a common feature, a pattern of cooperation and interdependence among the main institutions in the decision-making and implementing process” (Porumbescu 2018: p. 22).

However, in most of the receiving countries, integrating immigrants proves to be a difficult task: “another issue that is often set on the table lately in western societies is the culture of unlimited individualism at the expense of an altruistic attitude, although social policies try to promote by different means the civic spirit ” (Pogan 2018: p. 48). Furthermore, it is to be noted that “while some decades ago, immigration was encouraged by several European countries as a way to provide the necessary labor force much needed for the post-war reconstruction, the current common approach on migration regards it more as a threat rather than an opportunity” (Porumbescu 2019: p. 38). Regarding the national landscape of migrant integration, it is believed that “boosted by demographic decline and constant maintenance of the migration flow, sociological analyzes come to confirm fears and outline alarming predictions regarding the educational and occupational future of young Romanians” (Niță 2016: p. 87). And this is only one of the aspects related to the general approach of the Romanian society towards the arrival of refugees, which echoes the attitude expressed by other European nations.

In this context, the international community needs to find immediate and effective ways to deal with the migratory flows, by creating common instruments aimed at handling the situations of crisis, by sharing obligations among the states. According to the European Commission, “ ‘Relocation’ means a distribution among Member States of persons in clear need of international protection” (European Commission, 2015, p. 19). Relocation can be explained as the process of selecting and transferring refugees from the first asylum country to another country (relocation country) in order to provide the necessary protection, being an instrument for international refugee protection. Furthermore, relocation is one of the sustainable solutions to the problem of refugees, adopted by the international community, the other two being voluntary repatriation and local integration. From the perspective of the foreign policy dimension, the relocation of refugees is a tool for sharing responsibility between states in the field of refugee protection.

Since the emergence of the legal framework for carrying out the programs of relocation of refugees in Romania (Law no. 122/2006 on asylum in Romania), the General Inspectorate for Immigration (IGI), as the specialized body of the central public administration, which is subordinated to the Ministry of Internal Affairs (MIA), which exercises powers in the fields of migration, asylum and integration of foreigners, has begun the process of analysing and identifying ways to achieve the relocation of refugees, and has participated in training activities in this regard and in discussions with representatives of the United Nations High Commissioner for Refugees (UNHCR) on this topic.

While in the international literature and regulations regarding migrants in need of international protection there often appears to be a semantic distinction between the terms “refugee” and “asylum”, the normative provisions regarding the refugee procedures in Romania use the two concepts as interchangeable. Furthermore, while the Governments` s Ordinance no. 102/2000 addressed the “status and regime of refugees in

Romania”, the Law no. 122/2006 that replaced it addresses the issue of “asylum in Romania”.

2. Legal provisions regarding refugees and asylum seekers

The main regulations regarding the situation of foreign people in Romania are compiled in the following laws: Government`s Decision no. 639 from June, 20th, 2007 regarding the organizational structure and attributions of the General Inspectorate for Immigration (updated in May 2019), Government`s Emergency Ordinance no. 194 from December, 12th, 2002, regarding the situation of foreigners in Romania (updated in May 2019), Government`s Emergency Ordinance no. 102 from July, 14th, 2005, regarding the freedom of circulation on the Romanian territory for the citizens of the Member States of the European Union, the European Economic Space and the citizens of the Swiss Confederation (updated in May 2019), Law no. 122 from May, 4th, 2006 regarding asylum in Romania (updated in May 2019), Government`s Ordinance no. 44 from January, 29th, 2004 regarding social integration of foreigners who have acquired international protection or the right to stay in Romania, as well as the citizens of the Member States of the European Union and the European Economic Space (updated in May 2019), Government`s Ordinance no. 25 from August, 26th, 2014 regarding the employment and posting of foreigners on the territory of Romania and for modifying and completing normative acts regarding the situation of foreigners in Romania (updated in May 2019).

Despite the fact that the procedures regarding the arrival and the reception of refugees are generously prescribed throughout this normative system, the issues related to their effective integration in the Romanian society are still to be discussed. Furthermore, there are certain particularities attached to features such as identity, nationality, that need to be addressed in more subtle ways in order to allow for a real integration in the host societies. This particular determination is not specific to Romania as a destination country, but rather regards most of the European countries, as well as the European Union as a whole, given that “in European context, there is a dual drive in identity formation, one which originates in national pasts which hold the present in their legacy, and another which is geared up toward the future, oriented toward a European identity formation aiming for a community guided by a normative framework for integration and based on consensus of values and an identity based on the possibility of common historical memory” (Petcu 2018: p.33).

3. Receiving procedures in Romania

In the Romanian institutional system the Directorate for Asylum and Integration (DAI), within the General Inspectorate for Immigration, is the structure responsible for the problems of asylum and the integration of foreigners in the Romanian society. In this context, DAI aims to ensure unrestricted access to the asylum procedure of foreigners in need of international protection. It is the structure enabled to ensure registration, identification, record of asylum seekers and persons who have received a form of protection in Romania, and also to ensure the issuance and extension of the validity of identity documents and travel documents for asylum seekers and for persons who have received a form of protection. The Directorate also establishes which Member State is responsible for resolving an asylum application in the DUBLIN procedure, solves asylum applications in the administrative phase and researches and provides information from the countries of origin needed to solve asylum applications.

It is the responsibility of the Directorate for Asylum and Integration to ensure the accommodation, the material and financial assistance of the asylum seekers who do not have means of maintenance, counseling, medical assistance, etc. and to provide assistance for the integration of persons who have acquired a form of protection.

Reception, registration and settlement of asylum applications, assurance of assistance for the asylum seekers during the procedure and assistance for integration are activities carried out at the level of the Regional Centers for Asylum Procedures and Accommodation located in Bucharest, Giurgiu, Timișoara, Galați, Rădăuți and Maramures, territorial structures specialized in asylum issues.

The asylum application can be submitted by any foreigner, located on the territory of Romania or at a point for crossing the border. A person is considered asylum seeker from the moment of manifestation of will, expressed in writing or orally, in front of the competent authorities, from which it follows that he or she requests the protection of the Romanian state.

Asylum applications are submitted personally by foreigners located on the territory of Romania or at a control point for crossing the state border. In the case of minor foreigners, asylum applications can be submitted by the legal representative. Minors who are 14 years old can apply for asylum on their own behalf. Asylum applications outside Romania are not allowed.

The competent authorities to receive an asylum application are: the structures of the General Inspectorate for Immigration, the structures of the Romanian Border Police, the police units within which detention and preventive arrest centers are set up and operate and the structures of the National Prison Administration within the Ministry of Justice.

The territorial competence regarding the reception, registration and processing of asylum applications belongs to the regional centers of procedures and accommodation of the asylum seekers under the subordination of the Asylum and Integration Directorate, namely Bucharest Center, Timișoara Center, Galați Center, Rădăuți Center, Maramureș Center and Giurgiu Center. The competent authorities cannot refuse to receive the asylum application on the grounds that it was filed late.

After receiving the asylum application, the applicant will complete a preliminary interview, in order to establish his personal data and that of his family members, the route he traveled from the country of origin to Romania, the data regarding any asylum applications submitted in other third countries or in a Member State of the European Union, as well as the identity or any possessed travel documents.

The preliminary interview takes place in the presence of an IGI official and a translator. The translation will be carried out in a language that the applicant knows or is reasonably assumed to know.

Once the asylum application is submitted, the personnel of the General Inspectorate for Immigration or other competent authorities will collect the fingerprints of the asylum seeker who, according to the proven or declared identity data, has reached the age of 14 years. The fingerprints will be transmitted in the EURODAC System and stored on paper in the library of the General Inspectorate for Immigration and in electronic format in the national database AFIS (Automated Fingerprint Comparison System). The asylum seeker is informed in writing of the above operations. The collection and transmission of fingerprints of asylum seekers is done in compliance with the provisions regarding the principle of confidentiality and protection of personal data.

The specialized staff of DAI undertakes specific checks and activities in order to establish the real identity of the asylum seekers who do not have identity documents.

The asylum seeker is obliged to submit all the documents he has available and which are relevant to his personal situation, as well as the document for crossing the state border, to receive the temporary identity document for the asylum seekers, issued by the General Inspectorate for Immigration.

In the case of unaccompanied minors, as well as in the case of asylum seekers who are part of other vulnerable groups, the asylum procedure presents a number of particularities determined by the vulnerability of these persons and the need to treat them in an appropriate way.

Unaccompanied minors and persons from other vulnerable groups become asylum seekers from the moment they express their will in writing or orally to the competent authorities. Asylum applications of unaccompanied minors will always be processed in the ordinary procedure. In the case of unaccompanied minors, asylum application is a precondition for automatic access to the territory, thereby ensuring access to the asylum procedure. The resolution of asylum applications submitted by unaccompanied minors and persons from other vulnerable groups will be given priority. Unaccompanied minors and persons from other vulnerable groups who have applied for the protection of the Romanian state are not criminally liable for illegal entry or stay in Romania.

The official who registers the unaccompanied minor will immediately request the appointment of a legal representative. The appointment of the legal representative will be made by the General Directorate of Social Assistance and Child Protection, in whose territorial administrative area the specialized structure on asylum issues of the IGI where the asylum application is to be filed is situated. The Directorate will designate a person with higher legal or social studies from his own staff or from an authorized private body, who will support the rights of the child and participate, along with him, in the whole asylum procedure. The document appointing the legal representative will be sent to the competent structure of the IGI, respectively to the decision officer, who will attach it to the applicant's personal file.

In case the request of the unaccompanied minor regarding the granting of a form of protection in Romania was rejected by a definitive and irrevocable decision, the General Directorate of Social Assistance and Child Protection undertakes the steps provided by law to establish a protection measure, requesting the court to establish the placement of the child in a special protection service. It also informs the General Inspectorate for Immigration - the Asylum and Integration Directorate about the situation of the unaccompanied minor, who proceeds according to the law.

The protection measure lasts until the child returns to the parents' country of residence or to the country where other family members willing to take the child have been identified. The repatriation of unaccompanied minors should be done taking into account the principle of family identification and finding and also taking into account the principle of non-return and the best interests of the child.

In case the asylum application of a person from other vulnerable groups is irrevocably rejected and enforced, the one in question is forced to leave the territory of Romania within 15 days. When there are reasons that prevent the authorities from repatriation, the person concerned can obtain tolerated status for a limited period of time.

Unaccompanied minors who have received a form of protection on the territory of Romania are taken over in the system of services for the protection of the child, organized at the level of the county councils, respectively of the local councils of the sectors of the municipality of Bucharest, and benefit from all the rights provided by law for the child in difficulty. . They can also be enrolled in special integration programs.

Unaccompanied minors will receive identity documents, personal numeric code and they also have the right to be housed in centers up to the age of 18 years old. People who can be included in other vulnerable groups, who have obtained a form of protection, can benefit, upon request, from accommodation in the centers for asylum seekers of the General Inspectorate for Immigration. Also, these persons can be registered in the socio-professional integration program, which can be extended indefinitely until the problems have been overcome.

4. Refugees in Romania. Rights and obligations

During the asylum procedure, the foreigner requesting a form of protection in Romania benefits from a plenitude of rights, among which we recall: to stay in Romania until the expiration of a period of 15 days from the completion of the asylum procedure, unless the asylum application was rejected following its resolution in the accelerated procedure or in the border procedure, in which case they must leave the Romanian state as soon as the asylum procedure has been completed. In the case of the procedure for determining the Member State responsible for examining the asylum application, the right to remain on the Romanian territory ceases on the date of the transfer. Throughout the asylum procedure, the solicitor is entitled to be assisted by a lawyer and is provided free of charge, at any stage of the asylum procedure, including in the judicial phase of the procedure by which the restrictive measure of placement in a specially arranged space has been arranged, an interpreter able to provide appropriate communication.

□ The foreigner requesting a form of protection also has the right to contact and be assisted by an official of the United Nations High Commissioner for Refugees (UNHCR) or to be advised and assisted by a representative of the non-governmental organizations, Romanian or foreign, in any phase of the asylum procedure. Furthermore, the access, personally or through a representative, to the information contained in your file, except in the cases provided by law cannot be restricted. The access to information from the personal file is made on the basis of a request addressed to the specialized structure on asylum issues of the General Inspectorate for Immigration, while the personal data and any other details related to the asylum application are protected.

The refugees also have the right to be issued a temporary identity document, the validity of which will be extended periodically by the General Inspectorate for Immigration. Furthermore, material reception conditions that guarantee the subsistence and protect the physical and mental health are granted, as well as activities that support cultural adaptation.

Asylum seekers also have the right to benefit from free primary health care and appropriate treatment, emergency hospital care, as well as free medical care and treatment in cases of acute or chronic diseases that put their life in imminent danger, through the national emergency and first aid system qualified aid, and to be included in the national public health programs aimed at the prevention, surveillance and control of communicable diseases, in epidemiological situations;

□ They also benefit from access to the labor market under the conditions provided by law for Romanian citizens, after the expiry of a period of 3 months from the date of submission of the asylum application, if a decision has not been made in the administrative phase of the procedure in the case of the application, and the delay cannot be imputed, as well as during the course of the asylum procedure in the judicial phase.

Minors have the right access pre-school and compulsory school education, under the same conditions as Romanian citizens, unless a measure of expulsion of them or their parents is implemented.

Asylum seekers have the right to be visited by family members, representatives of national or international non-governmental organizations and bodies with responsibilities in the field of asylum or respect for human rights, authorized and accredited in accordance with the law, as well as by their legal representative.

In order to benefit from the rights provided by the law, the General Inspectorate for Immigration will assign a personal numeric code that is included in the temporary identity document. Minors benefit from the same protection offered, under the law, to the Romanian minors in difficulty. In the situation that an asylum seeker is devoid of discernment, his interview is conducted in the presence of the tutor or, as the case may be, his guardian.

Throughout the asylum procedure, the foreigner requesting a form of protection has the following obligations: to submit the motivated request for asylum in writing to the competent bodies, including photographs and fingerprints, as well as to present to the competent authorities complete and real information on their identity data and asylum application, along with all the available documents relevant to their personal situation. In order to receive a temporary identity document, the document for crossing the state border needs to be handed over. Each asylum seekers needs to follow the stage of the procedure and to inform the General Inspectorate for Immigration regarding the change of residence, within 5 days from the occurrence of the situation, and to respond to the requests of the bodies with responsibilities in the field of asylum.

The solicitors need to attend the medical examinations, to submit the vaccinations, as the case may be, for the purpose of protecting public health, and, upon request of the competent authorities, to submit to the corporal control. Asylum seekers are obliged to comply with the laws of the Romanian state, as well as the measures ordered by the Romanian bodies competent in the field of asylum. They have to leave the Romanian territory within 15 days from the completion of the asylum procedure, if they did not obtain the requested form of protection, unless the asylum application was rejected as obviously unfounded following its settlement in the accelerated procedure, in which case they must leave the territory of the Romanian state as soon as the asylum procedure has been completed. The obligation does not exist if they have a right of residence regulated according to the legislation regarding the legal regime of foreigners in Romania.

5. Discussion

The arrival and reception of asylum seekers in Romania is a less tackled topic in the national academic literature, compared to other types of human migration. Despite the fact that the normative framework regarding this issue is quite extended and comprehensive, the matter of social integration of this group of people is limited to very few procedures, failing to construct a proper state-individual relationship, specific to

developed democratic societies. It is the role of an institutional system that aims to serve its subjects to “implement policies relating to social services, establishing new rights and becoming new models of relationships that are alternative to the concept of citizenship and based on the principle of solidarity, which in turn, if you think about it, is the very basis of social security” (Grignoli and Șerban 2018: p. 9), thus creating the proper environment for real integration, which, in time, will help refugees become part of a nation and contribute to the development of the country.

As stated above, academic research on the arrival of refugees in Romania as a consequence of the “migration crisis” is rather scarce, partly due to the fact that, as some authors highlight, “the influx of refugees’ entries that affected other parts of Europe did not have a strong impact on Romania. Romania is not the country of choice for most asylum seekers, as shown by the low numbers of claims in comparison to those in Western European nations” (Bejan, Iorga Curpan and Amza 2017: p. 12). However, as previously outlined, the legal provisions create a context of refugee receiving that allow not only compliance with the European normative frame, but also follow the international agreements that Romania is part of. The restrictions of the legislative determinations leave unaddressed several issues that come out as conclusions of several studies, stating that “in countries of destination, we often find prejudice and discrimination against migrants in workplaces, schools, hospitals, public spaces. (...) At the same time, they face an alteration of identity and values” (Ilie Goga 2019: p. 42).

To sum up, given the fact that Romania has only recently become a destination country for migrants, as well as that the number of refugees that arrived in this country so far is not very significant, the mechanisms and institutional tools aimed at providing a proper context for refugee integration are not enough developed yet. However, the legislative framework established so far is functional, and most important, in compliance with the international agreements in the field, so it is reasonable to assume that the practical measures and procedures that will be adopted will follow along.

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