

# MIGRATION AND LAW

## ISSUES RELATED TO LEGISLATION ON MIGRATION IN ROMANIA

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### Abstract:

Aderarea la UE a dus în ultimii ani la schimbări substanțiale în normele de drept care reglementează regimul străinilor în România în calitate de cetățeni ai statelor membre ale Uniunii Europene și ai Spațiului Economic European, precum și în regulile de drept, care guvernează azilul în România, în scopul de a asigura conformitatea cu legislația europeană și cu alte instrumente juridice internaționale la care statul român este parte.

România are o politică de imigrație specifică în funcție de nevoile identificate la nivel național, luând în considerare impactul pe care acest lucru l-ar putea avea asupra altor state membre ale UE; această politică are drept scop asigurarea unui tratament echitabil și integrarea armonioasă a străinilor în societatea românească.

În ultimii ani, cu toate că România și-a păstrat în mare parte caracterul său de stat de tranzit, începe să devină, de asemenea, tot mai mult și un stat de destinație. Principalele scopuri pentru care străinii s-au stabilit reședința temporară în România sunt în mare parte legate de dreptul la reîntregirea familiei, educație, ocuparea forței de muncă.

**Keywords:** azil, solicitanți de azil, standarde minime, refugiat, migrație, trafic de ființe umane.

### Résumé:

Adhésion à l'UE au cours des dernières années a entraîné des changements importants dans les règles de droit des étrangers en Roumanie aussi que dans les règles pour les citoyens des États membres de l'Union européenne et de l'Espace économique européen, ainsi que dans les règles régissant l'asile en Roumanie, afin pour assurer la conformité avec la législation de l'UE et d'autres instruments juridiques internationaux auxquels l'État roumain est partie.

La Roumanie a une politique d'immigration spécifique sur la base des besoins identifiés au niveau national, en tenant compte de l'impact que cela pourrait avoir sur les autres États membres; cette politique vise à assurer un traitement équitable et l'intégration harmonieuse des étrangers dans la société roumaine.

Au cours des dernières années, bien que la Roumanie a largement conservé son caractère en tant que pays de transit, devient de plus en plus un état de destination. Les principales raisons pour lesquelles les étrangers ont été établis séjour temporaire en Roumanie sont principalement liés à la réunification de la famille, l'éducation, l'emploi.

**Mots-clés:** asile, les demandeurs d'asile, des normes minimales, les réfugiés, les migrations, la traite des personnes.

History has proved that the migration issue is one of the most dramatic aspects of all times. Each social arrangement was characterized by certain phenomena that, by their very nature, disturbed the social order, slowing down the linear development and accentuating entropies. Our era is facing, beside the wars and the well-known tensions, the phenomenon of migration of a considerable number of people from one country to another.

The social, political and demographic realities are sometimes more powerful than conventions, treaties, constitutions and the legislation of the States. The question that the Romanian literature does not cease to ask itself is what would have happened in the absence of a legislative framework establishing the migrants' rights. It is generally accepted that,

particularly during exceptional situations, human rights should be defined and implemented more rigorously and efficiently.<sup>1</sup>

The issues of refugees, of the migrant labour, of anyone who, for political, economical or even religious reasons, seeks refuge on the territory of another state, are questioning human rights at the highest level.

The whole world is shaken to see various images broadcast by the media, which depict refugees and their situation, sometimes tragic. As far as Romania is concerned, this country had to face both the problem of foreign refugees (including those coming from Somalia and Albania), that of Romanian refugees who went abroad seeking a better life. Sometimes we

<sup>1</sup> See Irina Moroianu Zlătescu, Victor Dan Zlătescu – *Refugiații și statutul lor juridic*, Institutul Român pentru Drepturile Omului, București, 1992.

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witness one of the greatest tragedies of our era: a psychological and a social tragedy and, last but not least, a tragedy that is also juridical.

Romania has had a long tradition in protecting the refugees' rights, which can be traced as far back as prior to the Middle Ages. Its natural continuation is found also in the first Constitution of Romania of 1866, one of the most liberal at its times that followed the Belgian model. The Constitution provided for a large number of citizens' rights, which gave it a widely democratic nature. For instance, it proclaimed that differences of religious faith and confession should not constitute a barrier against access to the civil and the political rights and the exercise thereof. It also proclaimed that the State should make no discrimination as to social class and that all citizens were equal before the law and had the duty to make their contribution to the public treasury and tasks<sup>2</sup>.

The Constitution guaranteed, among other things: individual freedom and inviolability of the domicile; protection of aliens residing on the territory of Romania, equal to the protection provided by the law to autochthonous persons and property; respect of the principle of the legality of incrimination and sanctioning (*nullum crimen sine lege; nulla poena sine lege*).<sup>3</sup>

### **The impact of history on migration flows.**

In ancient times the ancestors of the Romanians leaved on the territory of Dacia, speaking a Romance language. They inhabited a territory that included what later became the entire Roman province of Dacia, but also regions outside it: Crisana, Maramures, Moldavia, eastern Wallachia. All this territory represented the Dacian State which flourished under its leaders Burebista and Decebalus until Dacia was conquered by the Roman emperor Trajan in 106 A.D, who colonized part of its territory. Being a rich Roman province, Dacia represented both economic and military strategic interest for the Roman Empire. As it is known, beside the north-Danubian Romanians, who are called Daco-Romanians, in the Balkan Peninsula, more precisely in Northern Greece, in Albania and in Macedonia, live several hundreds of thousands

<sup>2</sup> See Irina Moroianu Zlătescu, *Constitutional Law in Romania*, Wolters Kluwer, Bucharest, 2013.

<sup>3</sup> See Cristian Ionescu, *Tratat de drept constituțional contemporan*, All Beck, București, 2003.

of Macedo-Romanians (Aromanians) and Megleno-Romanians<sup>4</sup>.

By the middle of the 3<sup>rd</sup> century A.D. major migrations of barbarian tribes had begun. In 271 A.D. Emperor Aurelian concluded that Dacia was overexposed to invasion and withdrew with his army across the Danube. All soldiers, imperial officials and merchants departed. But the peasants remained and withdrew in the mountains to live a pastoral life often exposed to the danger of attack by migratory people. Without Rome's protection, Dacia became exposed to the invading tribes that targeted richer lands. The Visigoths, Huns, Ostrogoths, Gepids and Lombards swept over the land from the 3<sup>rd</sup> to the 5<sup>th</sup> centuries and the Avars arrived in the 6<sup>th</sup> century.

Turkic tribes of Padzinaks (1091-1171) and Cumans (to 1241) occupied the regions of Wallachia and Moldavia as part of the powerful Cuman Empire ruled from Kiev. But after the dispersion of the Cuman tribes, the Vlachs formed the Roman provinces of Wallachia and Moldavia initially based in the towns of Curtea de Arges in the Wallachian Carpathians and Rădăuți in northern Moldavia. All these countries became secure, the capitals moved down from the mountains and the Hungarian king exerted his rule over them before they came under Ottoman control.

By its geographic position, Romania is connected to Central Europe by the Danube River while in the East it is bordered by the Black Sea. Its history of hardships and its geo-political position conferred to the people of Romania a high level of tolerance for minorities, and respect for their cultural identity and religion. History itself modeled the Romanian's positive attitude towards tolerance and respect of diversity. Throughout its history Romania has been constantly struggling to keep its freedom and identity trying to maintain its own balance between the great powers of the Ottoman Empire, the Austro-Hungarian Empire and Russia.

In Romania's modern history, the statistics of migration outflows show mainly periods of migration of minorities especially after World War II. In the late 19<sup>th</sup> and 20<sup>th</sup> centuries, Romania was predominantly a country of

<sup>4</sup> See Victor Dan Zlătescu, *Mari sisteme de drept contemporan*, Pro Universitaria, București, 2012.

emigration in the wake of territorial changes during the First and Second World Wars when it experienced the transfers of its minorities. 200.000 Hungarians left Transylvania between 1918-1922, while part of the Jewish population was deported during the Second World War. Approximately 70.000 ethnic Germans were deported by the communist authorities to the Soviet Union following the Second World War<sup>5</sup>.

Thus, during the past century Romania was mainly a country of emigration rather than immigration. Until early 1990, migration in Romania was mostly linked to ethnic minorities which were the first to emigrate, especially after the establishment of the communist rule: Germans, Jews, Armenians, Hungarians, Greeks, etc. These minorities were not simply refugees: they moved to countries where they had historical, ethnical and cultural ties (e.g. Germany, Hungary, Israel, Greece, US in the case of Armenians). They migrated during communism in hope for a safer and better life in the countries of their ancestors. The inflexible totalitarian system also caused many Romanians to emigrate during and also short after the fall of the Communist regime in Romania. As a result of wars, immigration and territorial conflict, there were communities of Hungarians and Saxons in Transylvania, Jews in all the regions of Romania, Armenians and Greeks in Moldova and Wallachia, Slovaks, Czechs and Ruthenians in Western Transylvania, Turks and Tartars in Dobrogea. The gypsy/Roma minority was also scattered in all these regions.

After World War II the Romanian state succeeded in retaining Transylvania and all territories in the west of the country, while the north of Bucovina was incorporated in Ukraine and Bessarabia became the Soviet Republic of Moldova known today as the Republic of Moldova, its population sharing the same Romanian origins, the same language, tradition and culture as those of the Romanian people.

Between 1950 and 1989 approximately 240,000 Romanian citizens settled in Germany; even if Saxons and Schwabs represented only 1.6% of the population according to the 1977 census, they constituted 44% of the emigrant population between 1975 and 1989. Ethnic

Hungarians were in a slightly different situation, considering that their home country was also communist. However, beginning in 1985, Hungarians and Szeklers emigrated in increasing numbers across the border. In this case the vast majority of those leaving Romania used mainly illegal (at that time) strategies such as crossing the green forest border with no papers and living in Hungary with no residence permit, etc.

Since Romania is part of the European Union, the movement of the workforce to the West European destinations has increased because of the unrestricted access to many labour markets. Nevertheless, Romania suffered since the beginning, especially middle of the 1990s, an alarming emigration of highly qualified specialists. The most usual trajectory has been for study scholarships offered to the top ranking Romanian students by universities in the USA, UK, Ireland, France and Germany, followed by secure and well-paid employment possibilities on these host countries' markets. Large salaries and a by far more prestigious social status constantly encourage Romanian intelligence emigration. The most notable areas of emigration study and employment in this sector are Sciences and Human Rights: Computer Sciences, Political Studies, and International Law.

The emigration outflow has started immediately after the fall of the Iron Curtain in the very early 1990s and mostly stopped at the end of the same decade, while the students' outpour is still an issue. Thus, the Romanian academia and society lost its very best and skilled specialists in all fields at the very start of its troublesome transition. This may be considered an important bottleneck for the country's progress during the transition period. Romania expects an increase in the number of immigrants in the coming years, especially after it joins the Schengen Convention. Nevertheless, a fact that the authorities must cope with is this "attractiveness" will be the same for both legal and illegal immigrants.

The Romanian migration changed from a circulatory flow, in the 1990s, to a cyclical and not permanent phenomenon. Migrants from Romania move, most of the time, to compensate for the economic crisis. The biggest migrant communities of Romanians, from Italy and

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<sup>5</sup> See Andreea Ripeanu, *Istoria statului si dreptului românesc, Curs universitar*, Universul Juridic, București, 2009.

Spain, are usually made up of workers with previous experience not only of external migration, but also internal migration, generated by the two internal domestic migration flows: one from the late 1980s, when the communist regime moved hundreds of thousands of people from the countryside to the outskirts of the big cities, and the second flow, when the closedown of many industrial sites created an inverse flow, from the urban to the rural areas, especially in the North-East of Romania.

Nevertheless, no uncontrolled migration from Romania took place after 2007, in spite of the increase with 150% of the residence permits for Romanians in countries like Italy. The migration flows from Romania indicate a pattern of integration in Europe by a circular professional migration able to generate a type of “horizontal cultural exchange” and a new concept of European citizenship. As far as immigration to Romania is concerned most of the foreigners with a legal status come overwhelmingly from Moldova and they usually settle in the capital, Bucharest.

**The existing legal framework.** Romania has a specific immigration policy based on needs identified at national level while taking into account the impact this may have on other EU Member States; this policy aims to ensure fair treatment and harmonious integration of foreigners in the Romanian society. Romania is a route of migration (legal and illegal) for people from the states of Eastern Europe, from Middle East countries, from South East Asia or from Africa. Although in some Member States there were trends of migration from countries in Central America and South America, such cases have not yet been reported in Romania.

In recent years, although Romania has kept largely its character of a State of transit, it has started to become a state of destination as well. Thus, at the end of 2009, in Romania there were 59,062 legal foreign residents from third countries, with 4% more than at the end of 2008 and with 76.2% more than in 2005. Of the 59,062 registered foreigners residing legally in late 2009, 49,406 had a right of temporary residence (84%) and 9656 (16%) a right of permanent residence, according to the goals set by law.

The main purposes for which foreigners have

established temporary residence in Romania are mostly linked to the right to family reunification (family reunification, family members of Romanian citizens, from the EU or European Economic Area), education (students), employment.

Another category of migrants is that of asylum seekers and those who have obtained a form of protection in Romania. Thus, in 2009 free access to the asylum procedure was provided to a number of 835 foreigners and this trend has maintained a high level while there was no return recorded. This trend is directly influenced by the economic situation of Romania and the implementation of European rules which provide that the State in which the asylum seeker enters or seeks protection for the first time is responsible for processing the application.<sup>6</sup>

Current legislation regulating the regime of foreigners in Romania, that of citizens of EU Member States and of the European Economic Area and the rules of law governing asylum in Romania are mainly conferred by Ordinance No. 194/2002 on the regime of foreigners in Romania, republished, with subsequent amendments of Government Urgency Ordinance No. 102/2005 on the free movement of citizens of member states of the European Union and of the European Economic Area, as amended by Law no. 260/2005, with subsequent amendments by Law no. 122/2006 on asylum in Romania, with subsequent amendments of Government Urgency Ordinance No. 56/2007 on employment of foreigners in Romania, approved with amendments by Law no. 134/2008.

EU membership has led in recent years to substantial changes in the rules of law governing the regime of foreigners in Romania as citizens of the Member States of the European Union and of the European Economic Area, as well as the rules of law governing asylum in Romania, in order to ensure compliance with European legislation and with other international legal instruments to which the Romanian State is a party.

This process of regulatory harmonization is in progress to identify viable solutions for

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<sup>6</sup> See Gheorghe Iancu, *Proceduri constitutionale. Drept procesual constitutional*, Universitaria, București, 2010, p. 124.

transposing and harmonizing the national law with the EU law on the *acquis* in the field. However, by amending national legislation within the areas mentioned above, the legislators seek permanent elimination of failures occurring in the implementation of the legislative framework regarding the regime of foreigners on the territory of Romania.<sup>7</sup>

Also Romania applies the provisions of Regulation CE No. 343/2003 on establishing the criteria and mechanisms for determining the member state responsible with the examination of an asylum application presented in one of the member states by an applicant of a third country as well as the Regulation CE No. 2725 of 11 December 2000 regarding the establishment of the EURODAC system to compare digital fingerprints with the aim to efficiently implement the Dublin convention.

The Urgency Ordinance Government Urgency Ordinance No. 102/2005 on the free circulation of the member states citizens and of those pertaining to the European economic space on the territory of Romania also transposes EU directives.

The Government Ordinance No. 44/2004 on the social integration of foreigners who acquired a form of protection of the right to stay in Romania was approved with modification through Law No. 185/2004 and facilitates the social integration of foreigners who benefit of a form of social protection in Romania.

Moreover, Romania has been associated as an observer in all forms of cooperation in the Tampere and Hague programs, even before its EU accession date. As a full EU member state, Romania effectively implements the measures set out in the two programs. By adopting the legislation on asylum, it has created a legal framework which is fully harmonized with EU legislation documents in this field.

It should be highlighted that the legislation on asylum in our country has been successively amended since 1996, to be in line with European legislation which itself has undergone many changes so far.

The national law mainly transposes the following Directives of the European Council:

The Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences. Published in the Official Journal of the European Union No L212 of 7 August 2001; The Council's Directive 2003/9/EC of 27 January 2003 laying out minimal standards for the asylum seekers in the member states, published in the Official Journal of the European Union No. L31 of 6 February 2003; The Council's Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted published in the Official Journal of the European Union No, L304 of 30 September 2004; Directive 2005/85/CE of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status published in the Official Journal of the European Union L326 of 13 December 2005.

The management of the migration phenomenon is based on the participation of all national institutions with competence in this area, through participatory management and institutional cooperation while the national coordinating role is played by the Ministry of Interior through its General Inspectorate of Immigration.

From the date of the full implementation by Romania of the provisions of the Schengen *acquis*, the categories of visas issued are of two kinds: uniform visa (valid for the Schengen area) and national visas (valid in Romania).

Since the uniform visa holder has the right to travel freely within the territory of all Schengen States during the period of validity, we can say that during the next phase of full implementation of the provisions of the Schengen *acquis* by Romania, the foreigners who want to reach other Schengen member states will try to take advantage and the number of applications for this type of visa will increase unduly. Also, taking into account the provisions of the Schengen *acquis* concerning the possibility that holders of a residence permit

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<sup>7</sup> See Adrian Bulgaru, *Standarde și măsuri la nivel național și european privind protecția internațională în materia azilului*, București, Pro Universitaria, 2013, p. 25.

issued by one of the Schengen States can move freely on the territory of other Schengen states under this permit and with a valid travel document, for up to three months within 6 months, it is most likely that the number of applications for the issuance of national visas will be increasing.

In Romania the General Inspectorate for Immigration is the competent coordinating authority in matters of migration and residence and is working with all other national institutions competent in the field.

The General Inspectorate for Immigration exercises the powers given to it by law for implementing Romania's migration, asylum, integration of foreigners and relevant legislation in these areas. The activity of the General Inspectorate for Immigration (GII) is a public service and is conducted in the interest of the community and in support of state institutions, and based solely on law enforcement. GII is an institution for managing issues of migration, asylum and social integration of foreigners in Romania.

In terms of organizational structure, the Inspectorate has structures at central and regional levels: the central level is composed of directions, services, and other functional structures at the local level and in regional centers and procedures of accommodation for asylum seekers, detention centers for foreigners in detention and county structures.

In parallel with the existent legislation, the Government of Romania adopts once in four years a National Strategy on Immigration. The old strategy adopted by Government Ordinance No. 122/2007 for the period 2007-2010, has set as main objectives: controlled immigration, asylum and social integration of foreigners, preventing and combating illegal migration also establishing the institutional framework, the annual plans of action and the necessary resources for achieving these objectives.

The National Strategy on Immigration for 2011-2014 focuses more on the common interests and on the cooperation between the EU member states in order to manage migration, especially in the event of Romania's entry into the Schengen space, for securing borders and for informing foreigners before reaching the country through Romania's diplomatic missions. The Strategy also focuses on

providing employment for foreigners who graduate a university in Romania, on institutional cooperation and on training the personnel of public institutions in view of working with foreigners and assisting them in their requests and needs. The Strategy represents the vision of the Romanian state with regard to managing migration. There is an effort to harmonize European legislation with national legislation.

The Romanian Office for Immigration which functions under the Ministry of Administration and Interior represent the central authority responsible for the implementation of the refugee policies. After interviewing the person who applied for asylum, a representative of the Romanian Office for Immigration adopts a decision which can then be contested by recourse and is the competence of the Court which analyzes the case in all its aspects.

Starting from the necessity to implement the EU regulations and to transpose them into the national legislation, the Law No. 122/2006 in Article 2 establishes the definition of terms such as: forms of protection, asylum seeker, subsidiary protection, temporary protection, displaced persons, massive influx of immigrants, transit zone etc.

The national legislation took into account the European legislation also in the context of simplification of the procedures for solving the requests for humanitarian protection.

An effective public policy mechanism is also the recent 2012-2013 National Strategy in the Field of Prevention, Assistance of Victims and Combating the Trafficking in Human Beings. The Strategy aims at enhancing the dynamism and efficiency of state institutions and the involvement of International Organizations for combating this phenomenon and for raising awareness of the public opinion with regard to the issue of trafficking in human beings. Also to be noted is that the Strategy transposes the Directive 2011/36/EU of the European Parliament and of the EU Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

**Asylum Procedure.** A person is considered as being an asylum applicant after expressing orally or in writing in front of the competent authorities his or her wish to request the

protection of the Romanian state<sup>8</sup>. The Law No. 122/2006 on asylum ensures the protection of human rights on asylum reflecting Romania's fulfillment of its obligations as an EU member state. This Law also represents the instrumental normative act for combating trafficking in human beings and abuse in asylum procedure. Romanian legislation on asylum has been successively amended starting in 1996 in order to be in accordance with the EU legislation provisions which also, in their turn, underwent numerous modifications up to now. The new law on asylum in Romania aims to ensure, through the definition of terms commonly used in the field of asylum and related terminology in this area, compliance with the terms used in Europe, both in order to avoid confusion as well as different interpretations. A series of terms are clearly defined: protection, asylum seeker claim for form of protection for asylum, foreigner, country of origin, the asylum, refugee status, subsidiary protection (which replaces the term humanitarian protection), temporary protection, family members, unaccompanied minors, displaced persons, massive flow.<sup>9</sup>

The law contains also expressly applicable procedural principles and guarantees for asylum such as access to the asylum procedures for any foreign citizen or stateless person requesting protection of the Romanian state, non-discrimination on grounds of race, nationality, ethnicity, language, religion, social status, faith, sex, sexual orientation, age, disability, chronic disease, belonging to a disadvantaged category, property, birth or acquired status and others, non-refoulement – which states that against the asylum seeker can not be taken measures of expulsion, extradition or forced return to the

<sup>8</sup> The National Strategy on Immigration 2011-2014 states that in recent years although Romania remains a transit country, it has also become more and more a country of destination. Thus, at the end of 2009, on the territory of Romania there were 59.062 foreigners from third countries illegally staying in the country, which represents 4% more than at the end of 2008 and 76.2% more than in 2005. Out of 59.062 foreigners there were 49,406 who had the right to temporary stay (84%) and 9,656 (16%) who had the right to permanent stay for purposes established and approved according to legislation. Also see reports regarding Romanian legislation on migration conducted by the Romanian Institute for Human Rights with the contribution of the following researchers: Marius Mocanu, Adrian Bulgaru, Daniela Albu, Petru Emanuel Zlatescu, Gabriela Varia.

<sup>9</sup> See Louis Ulrich, Ștefan Stanciugelu, Iris Alexe (coord.), *Gestionarea Benefică a Imigrației în România*, Fundația Soros România, București 2010.

border or on the territory of Romania, the principle of family unity, the confidentiality of data and information on the asylum application, the best interests of the child, guaranteed for unaccompanied minors, the presumption of good faith. The Law No. 122/2006 defines the statute of refugee as “the form of protection recognized by the Romanian State which is granted to the foreign citizen or to the stateless person who meets the conditions provided by the Geneva UN Convention on the status of refugees of 28 July 1951, to which Romania adhered by Law 46/1991 and also the conditions provided by the Protocol on the status of refugees”.

The asylum procedure is finalized within 7 days from the moment of communicating the decision to close the file and from the date of the communication of the decision by the General Inspectorate for Immigration by which the status of refugee was granted or according to each specific case within 7 days after the recourse or after the pronouncement of the Court. In case of accelerated procedure or border procedure the asylum procedure is completed immediately. The ordinary procedure for asylum applications in Romania is structured in two phases: administrative and judicial. In the administrative phase the asylum applications are individually examined by the administrative authorities on the bases of the interview with the asylum applicant, of his or her documents in the personal file and on the basis of information from the country of origin. In the judicial phase the asylum applicants whose applications were rejected can resort to 2 ways of recourse and their situation is going to be analyzed by the Court.

The forms of protection that can be granted to foreign citizens on the territory of Romania are: The refugee status; Subsidiary protection (which was previously defined as “conditioned humanitarian protection”). Under this type of protection the vulnerable categories are taken into account.

The refugee status<sup>10</sup> and the subsidiary

<sup>10</sup> The temporary protection is a form of protection that is granted collectively in exceptional situations and for a strictly determined period of time. Principles and procedural guarantees: access to the asylum procedure; non-refoulement; nondiscrimination; the unity of the family; the supreme interest of the child; confidentiality; the presumption of good faith; removing of criminal liability for entering or illegally being in the country.

protection are granted following an individual analysis of the case of each asylum applicant if the conditions envisaged by the asylum law are fulfilled. According to Law no. 122/2006 the refugee status can be granted upon request following a well grounded fear of the person that he or she might be persecuted in the country of origin on reasons of race, religion, nationality, membership in a certain social or political group, he is out of his or her country of origin and because of the fear of being persecuted, the person does not want the protection of the country of origin.

The subsidiary protection can be granted to a foreigner who does not meet the conditions for granting of refugee status but who has serious reasons to believe that if repatriated to the country of origin, he or she risks a violation of rights which might consist in: sentence to death; torture, inhuman or degrading treatments. A serious individual death menace of a menace to the integrity of one's persons on reasons of generalized violence in situations of internal or international armed conflict in case the applicant is part of the civilian population of the country of origin

The main rights of those benefiting of refugee status or of subsidiary protection are: - to remain on the territory of Romania and to benefit of the corresponding necessary documents in order to prove his or her identity when crossing the border; to choose the place of residence and to circulate freely; to be employ, free to exercise liberal professions and to be engaged in economic activities under the same conditions as those for Romanian citizens; to be able to transfer personal assets to Romania; the most favorable treatment provided by law for the foreign citizens when acquiring properties and real estate properties; protection of intellectual property; social and health insurance equal to those of Romanian citizens; access to all forms of education; equal treatment in exercising religious practices or beliefs; protection of personal data; the right to association with political purposes and to adhere to professional syndicates; free access to legal courts; upon request to receive a loan for a period of maximum 6 month with possibility of extension for maximum 3 months if there are no other sources of revenue from objective reasons; to have a legal address in Romania; to receive upon request any necessary assistance for

repatriation.

**Vulnerable categories.** Asylum-seekers are one of the most vulnerable groups of people in the world. But among them are people facing even further risks and problems. This includes children who are orphaned or separated from their parents, people suffering from psychological problems, mothers and fathers raising children alone, victims of human trafficking and survivors of sexual and gender-based violence. Typically, these people cannot advocate on their own behalf and national asylum systems are rarely able to identify them and ensure they receive the tailored social and psychological assistance they need. The fact that they are not identified and helped can, in turn, hinder a proper consideration of their asylum claims as they cannot provide all the required information in a clear way during the refugee status determination procedure owing to their special situation<sup>11</sup>. In Romania the asylum procedure for minor children who are not accompanied is a special procedure. Also a special procedure is applied to persons from other vulnerable categories. The minor children who are not accompanied and other persons from vulnerable categories become asylum applicants from the moment they expressed either verbally or in writing this request to the competent authorities. The applications for asylum from unaccompanied minors and persons from vulnerable categories are examined and solved with priority. These persons do not have a penal responsibility for illegally enter or stay on the territory of Romania<sup>12</sup>.

**Right to Family Life.** The Law 122/2006 on asylum emphasizes the importance of respecting family unity, sets the priority of the interests of the child and provides safeguards for unaccompanied minors seeking for protection.

<sup>11</sup> According to the data from the National Bureau of Statistics at 1 of January 2011 there were 71 refugees and 84 asylum applicants benefiting of humanitarian protection in Romania.

<sup>12</sup> To be noted is that UNHCR in Central Europe has launched the "Response to Vulnerability in Asylum" (RVA) project in Bulgaria, Hungary, Poland, Romania, Slovakia and the United Kingdom to improve the system of identifying vulnerable asylum-seekers and providing tailored legal, social, psychological and medical help. The project is co-financed by the European Union.



This law is an example of harmonization of the national legislation with the text of the 1951 UN Convention.

An unaccompanied minor asylum seeker will be considered - whether he or she expressed this option - and the process of granting asylum will be suspended until the appointment of a legal representative. The law provides that the authority for child protection initiates the appointment of a legal representative for the minor. According to Article 72 paragraph 2 of Law 122/2006 Romanian authorities have the obligation to support family reunification for unaccompanied minors. Paragraph 3 of the same article points out that in case of finding of the minor's family, a reasoned decision to reunite the family will be issued. The minor applicant will be interviewed only in the presence of his or her legal representatives. Children with special needs applicants will be interviewed by experts and specialists officers. The deadline for settling asylum application is 30 days. But this period is suspended until the appointment of the legal representative for the applicant unaccompanied minor. Article 7 of Law 122/2006 guarantees the principle of family unity for the spouse, unmarried minor children, for the dependent applicant, whether the minor is originating in marriage or outside the marriage, or in case the minor was adopted according to the national legislation in the country of origin.

To regulate the family unification procedure for beneficiaries of a form of protection in case of family members that are outside Romania, it was abrogated the Ministry of Interior Order No 213 of February 2002 that was establishing a common procedure for the settlement of claims for refugee status for family members of the person who has been granted refugee status in Romania. The Romanian government is granting refugee status to the spouse of the applicant if the marriage was contracted before entering the territory in which protection is granted<sup>13</sup>.

<sup>13</sup> According to the latest statistics provided by the UNHCR office in Romania around 2511 people sought asylum in Romania in 2012. 43 of these were unaccompanied minors, or children separated from their families. In 2012, 161 men, women and children were recognized as refugees and a total of 117 people were given a complementary type of protection. The most common countries of origin for immigrants in Romania

**Family reunification.** Beneficiaries of protection (refugee status or subsidiary protection) may apply for asylum in the names of family members (spouse or, where appropriate, the wife and minor children) in the home country or a third country. This is the only exception provided by the law when there is no obligation that the spouse or the minors should personally submit the request for asylum. According to the asylum law the family members of a beneficiary of refugee or subsidiary protection are the following: (i) the spouse or, where appropriate, the wife of the beneficiary of refugee or subsidiary protection; (ii) the minor children of the beneficiary of refugee or subsidiary protection dependents, provided they are unmarried, whether in or outside the marriage or adopted by national legislation of the country of origin.

In case the conditions for family reunification are met, if the decision making officer endorses that the proof of kinship was made, the Foreign Ministry will request the issue of a visa and travel for those mentioned above as family members of the beneficiary of refugee status. If the conditions are not met for family reunification the officer who issued a rejecting decision will communicate it to the beneficiary of a form of protection. The foreigner may exercise two appeals against this decision of rejection, on the same terms provided by law for the ordinary procedure.

**Student and Researcher Status.** Thousands of young people from Bermudas, Guinea, Nepal, Oman, Zambia, but also from England France, Germany and Sweden choose to learn in Romanian Universities, most of them opting for medical school or economics. Their number is almost constant every year, respectively over 10.000 young people who apply to study in a Romanian University<sup>14</sup>.

are: Republic of Moldova, Algeria, Morocco, Pakistan, Syria and Afghanistan.

<sup>14</sup> The numbers of young people who opted to study in Romania : Tunisia, 1.164 Israel - 1.002, France - 967, Italy - 950, Greece - 858, Germany - 488, Sweden - 440, Morocco - 431, Turkey - 369 the Serbian Republic 361. The most preferred Universities are the University of Medicine and Pharmacy “Carol Davila” Bucharest, UMF “Iuliu Hațieganu” Cluj-Napoca, UMF Timișoara, the Bucharest School of Polytechnics, the Bucharest Academy of Economic Sciences and the Babeș-Bolyai University in Cluj-Napoca.

The Government Urgency Ordinance 194 of 12 December 2002, Article 24, point c) mentions that a long stay visa is granted to students and researchers who are foreign citizens. Regarding the stay in Romania of foreigners who came for study, there is a Cooperation Protocol between the Ministry of Education, Research and Youth the Ministry of Foreign Affairs and the Ministry of Administration and Interior providing that these ministries through their specialized institutions organize annual meetings in Universities to inform on the regime of foreign students in Romania<sup>15</sup>.

Some categories of young people from non EU countries who wish to study in Romania are tax exempted for the stay permit due to the special attention given by the Romanian Office for Immigration to those foreigners who do not have the appropriate means to cover the cost of the stay permit.

The support offered to these young people is in accordance with the dispositions of the Ministry of Administration and Interior contained in the Protocol signed on 7 September 2012 between the Romanian office for Immigrants and the National Monetary Printing Office.

Foreign citizens with permanent residence in Romania also benefit of this advantage. The Protocol also addresses to stateless persons of Romanian origins who were repatriated as a consequence of an international agreement and who do not have the means to cover the fee for the stay permit. Also refugees or people that benefit of subsidiary protection are exempted from the tax for the stay permit accordance with inter ministerial, inter governmental or international agreements to which Romania is part.<sup>16</sup>

According to Article 5 of the protocol these benefits are granted only once a year and not for those who have lost a school year otherwise than for medical reasons,

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<sup>15</sup> According to the information from the General Inspectorate for Immigration during the school year 2011-2012 there were issued 1492 permits of stay for studies to foreign citizens from third countries and 270 certificates for studies for citizens of EU and EU Economic Area. The main countries of origin of the applicants are Tunisia, the Republic of Moldova, Morocco and Israel. Also until 30. 06. 2012 in Bucharest there were already 2404 stay permits for studies.

It is worth mentioning that the Romanian Office for Immigration offered the same benefits before the signing of this Protocol through an Agreement with the Autonomous Department for the Administration of the State Protocol Patrimony – RAAPPS. The stay permit for foreigners is granted also on the basis of international documents to which Romania is part.

**Diplomatic staff.** In Romania, members of the diplomatic staff, of consulates or of the technical-administrative staff of an embassy on the territory of Romania together with their family members have a special regime and so have the representatives of the international organizations. The main regulations which are applied are contained in the Vienna Convention of 24 April 1963 and the Convention of 14 March 1975 on representation of states in their relations with the international organizations universally acknowledged. Also the juridical regime of the diplomatic and consular staff is regulated through statues and protocols as well as through bilateral agreements between states. The right to free circulation on the territory of the state of residence is recognized by the majority of the world's states. The Ministry of Foreign Affairs officially communicates to all diplomatic missions which are the areas of conflict where the access of diplomatic staff is either forbidden, restricted or not recommended. The Ministry of Foreign Affairs also communicates the procedures for obtaining travel authorization for these countries.

In Romania, like in most countries, the entrance, stay and departure of the diplomatic and consular staff are regulated by special laws on the status of foreigners as well as by circular notes issued by the Ministry of Foreign Affairs and addressed to the respective diplomatic missions. The principle of reciprocity is the basis for all these regulations<sup>17</sup>. The principle of reciprocity is strictly respected in the relations between states in order to avoid any advantages or disadvantages which can occur or can be determined by the lack of harmonization between local legislations of countries regarding

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<sup>16</sup> See Lavinia Barlogeanu (coord.), *Identitate si globalizare*, Humanitas, București 2005.

<sup>17</sup> See Grigore Geamanu, *Principiile fundamentale ale dreptului international contemporan*, Ed. Didactica si Pedagogica, București, 1967, p. 15.

the diplomatic staff.<sup>18</sup>

Urgency Ordinance No. 124/2002 regarding the regime of foreigners in Romania, Section 2, also mentions in its Article 20, "Types of visas", pointing paragraph (ix), the diplomatic visa and the office visa, identified by the symbol DS. Article 25 of the same law stipulates "the diplomatic visa" and "the office visa".

The diplomatic visa and the office visa allow entrance to Romania of holders of a diplomatic passport, usually for a long stay, with the purpose of performing an official function on the territory of Romania, as members of a diplomatic mission or of a consular office of their country of citizenship.

These types of visas are issued to holders of diplomatic passports or of office passports on request by the Ministry of Foreign Affairs of the respective state sending its diplomatic staff to be accredited in Romania. These visas are also issued to the family members accompanying the diplomatic or consular staff and are valid during the period of the diplomatic mission, or in accordance with the bilateral agreements to which Romania is part.

In Romania the diplomatic cards are of three types (red, yellow and blue): The Red CD series diplomatic cards are issued to diplomatic, consular personnel, staff of international organizations and their families, holders of diplomatic passports. It gives right of residence and diplomatic immunity on the territory of Romania; Yellow TC series diplomatic cards are issued to technical-administrative personnel and their families, holders of diplomatic and service passports. It gives right of residence and certain immunities on the territory of Romania; Blue PS series diplomatic cards are issued to staff of the diplomatic missions or in the particular service of high rank diplomats and to their families. It gives right of residence on the territory of Romania.

All the above-mentioned cards are issued starting with March 2012. The old version of cards issued starting with 2007 by the Ministry of Foreign Affairs, as remain valid and will ceased to be valid at the end of 2014.

However, the Romanian legislation is not rich in legislative norms regarding the status of

diplomatic staff. The Urgency Ordinance OUG No. 195/2002 regarding the regime of foreigners in Romania makes little reference to diplomatic staff and there are no specific regulations in the Romanian legislation with regard to records of diplomatic and consular staff, issuance of travel documents, validity extension regulations etc, which need to be settled through a normative act.

**Human trafficking.** The collapse of communism in Eastern Europe in 1989 has since provided new resources geographical and human for the sex trade and traffic. Indeed, one of the most striking images of the changes in Eastern Europe soon after the fall of the Berlin Wall was that of women lining the highways across the region, offering sex for sale. Political and economic liberalization as well as internal and international militarism created new opportunity structures and daunting economic uncertainties that have produced both a demand for and a supply of sex workers in and from Eastern Europe. The majorities of these sex workers have been and are women and girls. Recent reports consistently note the increased number of women and children trafficked to, through, and from Central and Eastern Europe. Whether working part-time to supplement income, full-time voluntarily in sex clubs, or forced in the context of trafficking, prostitution is a stable, ever-expanding feature of the global service economy<sup>19</sup>.

As stated by Franck Laczko from IOM in his paper "Human Trafficking: The Need for Better Data", it is important to clarify the terms "smuggling" vs. "trafficking". It is an obstacle to creating a workable international definition of human trafficking since it tends to overlap with people smuggling. Smuggling is defined as the "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident." The definition distinguishes smugglers, whose main occupation is transporting migrants via illegal channels, from traffickers, who combine transportation with exploitation. Categorizing

<sup>18</sup> See Corina Florenta Popescu, *Cutuma in dreptul international public*, Universul Juridic, București, 2012, p. 242.

<sup>19</sup> See *Iregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, International Council on Human Rights Policy, 2010, p. 11.

these crimes can be difficult, however.

IOM data show that there is considerable trafficking within Central and Eastern Europe, and not only between the East and West. In 2001, the majority of trafficking victims assisted by IOM came from Moldova, Romania, and Ukraine. In the majority of cases, the women had been trafficked to countries and provinces in the Balkans, especially Bosnia-Herzegovina, Kosovo, and the Former Yugoslav Republic of Macedonia. IOM data also indicate that trafficking is occurring between Central and Eastern Europe and Asia. For example, in 2000 IOM assisted Romanian and Moldovan women who had been trafficked to Cambodia.<sup>20</sup>

**Internal cooperation for combating trafficking in human beings.** The national authorities that internally cooperate and have attributions in combating the trafficking in human beings are the following: The Ministry of Foreign Affairs, the Minister of Labor and Social Solidarity, the Ministry of Administration and Interior, the Ministry of Education and Research, the Ministry of Health and Family, the Ministry of Justice, the Public Ministry, the National Authority for Child Protection and the County and Local Councils have attributions for combating human trafficking<sup>21</sup>. But NGOs and representatives of the Civil Society can also be involved in combating human trafficking. The great number of national institutions with attributes in this matter justifies the amplitude and diversity of the trafficking in human beings phenomenon. The Ministry of Foreign Affairs also has the obligation to issue and transmit to all stakeholders a list with the states having a high potential for human trafficking and especially the transit countries<sup>22</sup>.

Law. 302/ 2004 on international legal cooperation abrogated the previous national legislation which was incomplete and inconsistent and managed to harmonize the internal legislation with more simplified

procedures established by the EU Convention of 29 May 2000 and the second additional Protocol of the European Council of 8 November 2001 regarding international legal assistance on criminal issues. Thus law No, 302/2004 becomes the main national instrument for combating trafficking in human beings and organized crime.

International legal cooperation as provided by Law No. 302/2004 establishes as forms of international cooperation the following: extradition; transfer of criminal issue procedures; recognition and implementation of decisions on criminal issues; the transfer of convicted persons; the hearing of witnesses, experts and prosecuted persons; the communication of procedure documents that are submitted for a criminal trial; the criminal record.

But in spite of enhanced international cooperation the statistics in this matter remain uneven and not always reliable. For instance, a UK inter ministerial report stated that most victims of traffic in Britain came from Nigeria, Vietnam, Albania, Romania and China while the trafficking in human beings increased in Albania with 300%, in Lithuania with 171% and in Poland with 148%. The figures for Romania and China decreased according to the UK Report.<sup>23</sup>

According to the 2012 Report by the Romanian Ministry of Foreign Affairs and the National Agency for Combating Trafficking in Human Beings the rate of victims of human traffic is of 5.50 compared to 5.46 in 2011 for a total population of 18,916,735 (estimated as of 1 April 2012).<sup>24</sup> According to the Report 1 of 3 persons annually identified as victims of human trafficking are women and approximately 1 of 3 persons is a minor person. Thus the dynamics in the trafficking of victims identified in recent years maintains the constant downward trend in the number of persons trafficked annually identified. Thus, in 2012 were identified 1,041

<sup>23</sup> See *Report on Migration and International Human Rights Law*, International Commission of Jurists, Geneva 2011.

<sup>24</sup> The same Report shows that most victims are young women, minors and people with disabilities. Most of the victims are women who are forced to practice prostitution: 58% from the total of trafficked persons as compared to 51% in 2011; 33% were victims of trafficking for forced labor in various sectors of economy as compared with 38% in 2011; 11%, mostly children were victims of trafficking forced to beg and exploited by organized crime.

<sup>20</sup> See *Human Rights and the Millennium Development Goals in Practice: A review of country strategies and reporting*, OHCHR, Geneva, 2010.

<sup>21</sup> See *Internally displaced people*, OHCHR, Geneva, 2007.

<sup>22</sup> The following countries are beneficiaries of human trafficking: Germany, Italy, Spain, Netherlands, and France, with Poland, Turkey, Japan, Serbia and Montenegro being both transporters and consumers.

victims, which represents 7 less than in the previous year and 113 fewer than in 2010.

Out of trafficked persons identified in our country in 2012, the percentage of foreigners is very low. Only 4 victims of another nationality than Romanian were identified but there may be still a number of unidentified victims not reported statistically. In any case most of the victims are females. The average age of victims is 24, but there is an increased vulnerability at the age of 17.

There were 554 victims of trafficking in 2012 with 52 persons less than in the previous year and with 72 persons less than in 2010. The gender distribution shows that 69% of the victims are females while 31% are males. Also women aged between 13 and 27 appear to be most vulnerable to trafficking.

The Report also highlights as an effective public policies mechanism the recent 2012-2013 National Strategy in the Field of Prevention, Assistance of Victims and Combating the Trafficking in Human Beings. The Strategy transposes the Directive 2011/36/EU of the European Parliament and of the EU Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

The Strategy provides a multiannual Plan of Action and reflects the point of views of central authorities as well as those of the representatives of the Civil Society who participated in the drafting and consultation phases of its elaboration.

The Strategy offers answers and solutions to the problem of human trafficking on the basis of EU legislation in this field and provides the following measures: reconfiguration of the protection and services system for the victims of trafficking; strengthening the capacity of early warning and identification of victims and guiding the victims to the providers of special services to which they are entitled; enhancing the social inclusion programmes for victims of trafficking; more efficient measures for supporting and protecting victims who agree to participate in hearings in Court or to be witnesses in trials for all the duration of the trial and ensuring financial compensation. The Strategy aims at enhancing the dynamism and efficiency of state institutions and the involvement of International Organizations for combating this phenomenon and for raising awareness of the public opinion with regard to the issue of trafficking in human beings.