

Role of administrative bodies in protecting the rights of refugees

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Abstract

Each Member State on whose territory are refugees is responsible for their protection and the Office of the United Nations High Commissioner for Refugees have the task of ensuring that governments take all actions necessary to respect their rights.

Romania has begun to build its own refugee protection system in 1991, when it joined the specific international legal instruments and the further development of the national asylum system led to the harmonization of legislation according to standards set by European Union regulations and obligations under the adherence to various international human rights instruments.

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Introduction

As a legal concept, “human rights” refers to the subjective rights of individuals [1], in relation to public power and other people, but it constitutes also a veritable legal institution consisting of a set of domestic and international rules that concern the recognition and protection of human rights against abuses of states and their abuse by peers [2].

Human rights protection is primarily of domestic jurisdiction of states, but it belongs also to international jurisdiction, regarding that, in principle, issues of promotion and protection of rights remain the responsibility of states and international mechanisms for protection only intervene when countries themselves do not respect or do not have the necessary measures in the event of violations of the rights enshrined in the Convention (to which they are parties) or by jus cogens norms, thus affecting the international legal order [3].

According to the doctrine [4], the refugee is the person that after some well-founded fear of being persecuted for reasons of race, religion, nationality, membership

of a particular social group or political opinion, has left the country of origin and because of these fears, is unable or unwilling to return to that country.

Unlike other people who leave their home countries due to their decisions, refugees have no other way to escape the persecutions that threaten their rights as human beings.

Refugees are a distinct category of foreigners, existing at a given time in a State from which they seek asylum, while they escape some actual situations or conduct of the factors responsible in their home country, which they consider unbearable [5].

Aspects of the current situation of refugees

Armed conflicts taking place in some countries for ethnic, religious reasons, power struggle, but the struggle for democracy of other groups, lead to refuge in other countries of millions of civilians, adults or minors.

More dangerous is that, in the name of fundamentalist religious precepts, hundreds of thousands of people have to flee from the occupied territories, such as the so-called "Islamic State".

The outbreak of internal conflicts generated by ethnical reasons or the struggle for democracy lead to serious human rights violations. For example, in Syria, government troops used machine guns against the people protesting for obtaining political and social freedoms, violating thus the rights to physical integrity and security of the persons concerned, contrary to the UN Human Rights Council resolution adopted on 23 March 2012 on ceasefire [6].

Around 2.8 million Syrian refugees have fled to neighboring countries and North Africa, according to the latest statistics, Lebanon is the country with the largest number of Syrian refugees (1.100.486), followed by Turkey (773.935), Jordan (597.328), Iraq (225.409), Egypt (137.734) and North Africa (23.367). Of Syrian refugees, 85% live outside official camps and 62% of their children of school age are not enrolled in some form of education.

In this context, the UN made an emergency appeal for additional support of half a million refugees, Germany supplementing the humanitarian program intake for them [7].

By the end of June 2014 in a UN report indicated that 110.000 Ukrainians took refuge in Russia, Poland, Belarus and Romania and 54.000 people were displaced within Ukraine.

Ukraine faced turmoil emerged after the previous regime in Kiev's refusal to sign the end of 2013 a trade agreement with the European Union, the former pro-Russian Ukrainian President Viktor Yanukovich preferring to turn to Russia to get economic aid, Ukraine (a former Soviet republic) being in recession for over two years. This turnaround has caused a pro-European national movement of challenge which led to Yanukovich's order to give up power followed by the annexation of Crimea to Russia and then by a pro-Russian separatist insurrection in the East of the Country [8].

A report by the Office of the United Nations High Commissioner for Refugees, released in Geneva on March 21, 2014, shows a sharp increase in asylum applications during 2013 for 44 industrialized countries. Thus, it states that 612.700 people applied for asylum in Europe, North America, East Asia and the Pacific – this being the largest cumulative number compared to previous years.

The largest growth on regions of asylum applications was registered in the 38 European countries that have received 484.600 applications together – representing an increase of one third compared to 2012. Germany was the most requested, with 109.600 new asylum applications. France (60.100 requests) and Sweden (54.300 requests) were also major receivers [9].

North America ranks second by number of asylum applications, amassing in 2013 a total of nearly 98.800 applications.

In East Asia and Pacific, both Japan (3.300 applications) and Republic of Korea (1.600 applications) received a record number of applications for granting asylum, compared to previous years. Australia (24.300 applications) also registered a significant increase compared to 2012 (15.800 applications), which places it almost on par with the level in Italy [10].

The European Union acts increasingly more in migrants matter for Member States to ensure a proper system.

Data released in June 2014 by Eurostat [11], shows that in 2013, EU countries have provided protection for 135.700 asylum seekers, almost 20.000 more than in 2012.

Of these, 64.500 were granted refugee status and almost 51.000 have received so-called subsidiary protection, since they did not meet the conditions for the granting of refugee status, but were about to suffer an injury to rights when returning to their countries of home. More than 20.000 people have received, according to Eurostat, the EU residence permit for humanitarian reasons.

The largest group of beneficiaries of protection status have represented Syrian citizens (almost 36.000, i.e. double compared to 2012, in percentage 26% of those who were received into the EU), followed by citizens of Afghanistan – 16.400 (almost 12% of the total) and those in Somalia – 9700 (7%).

Among European Union countries where asylum seekers received positive decision, the first places is Sweden, with 26.600 applications accepted and Germany with 26.100 applications approved.

In Romania, according to the European Statistics Office, Syrian citizens are the beneficiaries of the largest number (1580) of positive decisions.

Regulations, bodies and procedures designed to protect the rights of refugees

Currently, the main international instruments that form the legal foundation of the system of protection for this category of people is the: Refugee Convention, dated July 28, 1951; Protocol adopted on 31 January 1967 in New York; Declaration on Territorial Asylum, adopted in 1965 at the UN; European Union Council Resolution on minimum guarantees for asylum procedures adopted in 1995.

Due to its geostrategic position and politico-economic system, Romania was and continues to be since the existence of the great empires, an area favorable to freedom of movement, which is exploited to the maximum by refugees.

Since the early twentieth century were imposed a series of regulations on the status and problems of refugees in Romania, the first being the 1915 Aliens Control Act and Implementing regulation, which provided that “political refugees are granted residence in Romania by the Ministry of Interior”, receiving in this regard a “free pass”. Currently, the protection of the rights of refugees is governed generally by Law no. 122/2006 on asylum in Romania, as amended and supplemented, which adopted based on the recommendations of the Council of Europe, the minimum guarantees for asylum procedures, and by Law no. 118/2012 on approving Government Emergency Ordinance

no. 18/2012 amending Government Emergency Ordinance no. 30/2007 on the organization and functioning of the Ministry of Interior, by which was established the General Inspectorate for Immigration (IGI), with competencies in the area of migration and asylum on national level by repealing the Romanian Immigration Office, which operated previously.

Internationally, the first organization that founded refugee rights protection mechanisms were: the International Committee of the Red Cross [12], and the League of Nations and later the United Nations.

On December 14, 1950 was established by the United Nations General Assembly the United Nations High Commissioner for Refugees (UNHCR), which replaced the United Nations on Refugee Issues, which was established in 1947.

High Commissioner is mandated to lead and coordinate different international operations for refugee protection, its primary purpose being to protect the rights of refugees and to ensure the possibility of migrants to exercise their right to seek asylum and find a safe place in another State, with the option to return home voluntarily, integrate locally or to settle in another country.

According to paragraphs 1 and 8 letters a and d of the Statute of the Office of the United Nations High Commissioner for Refugees, UNHCR is responsible, under UN auspices, to provide international protection to people fleeing persecution in the countries where they lived before [13].

UNHCR is present in Romania since September 1989, since the beginning offering assistance to the Romanian Government to improve the asylum system, but also to implement coherent programs to integrate people who are granted a form of protection.

In achieving its goals, UNHCR is working with relevant government institutions (eg, the General Inspectorate for Immigration, Border Police General Inspectorate of the Ministry of Internal Affairs, Ministry of Foreign Affairs and other ministries).

General Inspectorate for Immigration, which is organized and operates as a public institution of central public administration, with legal personality, under the authority of Ministry of the Internal Affairs, implements policies and relevant legislation of Romania on migration, asylum and integration of foreigners. It also provides regional

and international cooperation on migration and asylum, contributing to the development of functional asylum systems in Southeast Europe.

Since the second half of the twentieth century international refugee protection procedures have seen a significant development under a system created and supervised by the UN, in close correlation with the development of human rights.

The main components of refugee rights protection procedures carried out by the United Nations High Commissioner for Refugees are: reception of asylum seekers and refugees; intervention with the authorities, when required; ensuring the physical integrity of applicants; protection of women, children and the elderly; improving national legislation and asylum procedures; participation in the development of procedural rules in the receiving States; taking protection provisions in the text; promoting specific legal advice.

UNHCR monitors granting the status of refugees, will take contact with asylum seekers (including those in detention), informing them about their rights, monitors the personal security of applicants and takes the necessary measures to prevent or to remove any form of violence directed against them [14].

Detailed rules for the implementation of procedures to protect the rights of refugees begin with admission to a State territory, asylum and protection of human rights, including ensuring that the principle of non-refoulement (without which the safety and even survival of applicants would not be possible) and ends by achievement by refugee of a sustainable nature status, which ideally should be done by restoring protection in the country of origin of refugee.

In order to improve specific procedures, UNHCR maintains a constant dialogue with state administration bodies, NGOs and academic institutions to fill legislative gaps and to provide the most appropriate tools for protecting refugees.

In Romania, to achieve protection of the rights of refugees and their integration, the General Inspectorate for Immigration cooperates with the structures of the Ministry of Internal Affairs and other state institutions, collaborates with nongovernmental organizations active in the field of migration and humanitarian protection, concludes agreements with similar foreign institutions and international organizations under the law.

Conclusions and proposals

Generated by certain forms of discrimination, to some extent, is also the migration phenomena so that to eliminate shortcomings specific to the situation in which they are, the refugees should receive more support from the state's administrative bodies of reception and international organizations.

Both at universal level and regional-European they act to ensure proper conditions to refugees, but it requires normative and procedural measures to continuously improve on the complex evolution of this field, generated by the widening of the likely causes of migration, to better meet the needs of protection.

Accession of Romania to the European Union has led in recent years, to substantial changes of the internal rules of law which states the regime of foreigners and citizens of EU Member States and the rules of law governing asylum in our country in order to ensure compliance with European legislation and international legal instruments to which the Romanian state is a party.

Involvement of European Union in a larger extent on resettlement of refugees is necessary in the context that neighboring countries to Syria host three million refugees versus 100.000 who were resettled in 28 EU countries. Moreover, it requires the commitment of all Member States to rescue refugees, knowing that in October 2014, several days after the death of 366 migrants off the island of Lampedusa, Italy launched operation "Mare Nostrum", the Italian Navy saving, for one alone, about 50.000 immigrants, mostly coming from Syria and Sub-Saharan Africa [15].

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