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The Immigrant's Legal Status in International Law

International Legislation Specific to the Minor Immigrant

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Abstract: Inside the vast array characterizing the phenomenon of migration, in this paper we chose to focus our analysis on a unique and extremely delicate category: the minor immigrants. The main objective is to highlight the heterogeneity of juvenile migratory phenomenon, achieving a prospective of analyses which focuses not only on international law aimed at protecting minors but also on the flaws of European systems which ignore too often the importance of the superior interests of the child. Mainly *the Convention on the Rights of the Child*, signed in New York in 1959, provides a generalized protection of minor figure and it represents the legal basis for all rules directed towards children and thus to minor immigrants.

Keywords: minor; migration; international; legislation

1 Introduction

"Infanzia" is a Latin term that catalogues a precise period of human life. Another term *"infans"* means the "one who still does not speak" as translated from Latin; thus such terms have negative connotation as they are indicators of incapacity, inability to express themselves or to make themselves understood.

The principles established in the **Universal Declaration of Human Rights** concern all human beings, regardless of their gender, race, origin, religious beliefs, age. And therefore children, being human beings "have such rights as any other person".[2] The child, however, is a human being and as a consequence holder of all rights established in multiple international and regional tools, but he is connoted of incapacity and particular vulnerability, features that are reflected in special needs: being an *"adulte en devenir"* he needs protection in useful time which should translate into strengthening the traditional human rights and especially in the declaration of specific rights for his status of *"infans"*.

The legal treatment of the foreign minor from the substantial point of view means in fact an extremely delicate territory, being on the border of two opposite legislations, one in favor, the one relating to minors, written with principles of protection and support, and one against, the one relating to

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[2] Recommendation no. 1065 adopted on October 6, 1987 of Council of Europe Parliamentary Assembly, 39th ordinary session.

foreigners, born as legislation for public safety and written, at least partially, with principles of control and defense.

The minor immigrants are holders of rights recognized internationally through conventions and declarations that establish the parameters of fundamental protection. Only since the late 19th century we are witnessing an awareness of the need to give the child special protection and the necessity of no longer considering him as subject of education, but rather subject with rights.

The issues relating to children's rights were addressed by the international law since the industrialization period, being closely connected with the theme of children exploitation in the world of labor, whereas before it was a privilege, exclusive to the internal order of each state. And it was precisely the **International Labor Organization** the one that has "internationalized" the theme of minors in 1919, opening for ratification **Convention no. 5**, which introduced the minimum age for admission of children into the workforce.[1]

For a generalized protection of the child it should be expected the **Society of Nations**, which first, turned its attention to the rights of children as follows: September 26, 1924 **The Fifth Nations General Assembly**, inspired by the **Charter of Child Rights**, written by Eglantyne Jebb[2], approves the **Declaration on the Rights of the Child**, normally known as the **Geneva Declaration**, which, although not having binding feature, it sets out five fundamental principles: the child has the right to physical and mental development, to food, care, to return to a normal life if he was demoralized, cared and helped if he is orphan.

The system, therefore, tended to affirm the material and emotional needs of minors, even if it was not designed as a tool to value the child as holder, but only as a passive recipient of rights.

Despite its limitations, the **Declaration of Geneva** is anyway a fundamental document that recognizes the special status of children to be protected and promoted.

After World War II, the **United Nations Organization** replaces the **Society of Nations**. In face of the serious and repeated human rights violations that have characterized the last world conflict, the states feel the need to anticipate, internationally, forms of adequate protection either through general acts, regarding all individuals or through specific tools dedicated to childhood.

December 10, 1948 in New York it was approved the **Universal Declaration of Human Rights**. The text is an important step in recognizing the rights of all people, but it is not directly addressed to child's condition. The declaration affirms: "*Each individual is entitled to all the rights and freedoms set forth in this Declaration, without distinction on grounds of race, color, gender, language, religion, political opinion or otherwise, national or social origin, wealth, birth or another condition*."[3]

The recipients of the principles contained therein are indeed all human beings, and consequently minors, who, according to the Declaration they must entitled to a special social protection, whether

[1] The age which was set at 14 years old, later it was raised to 15, with the Convention no. 59 of 1937. There have been numerous the successive interventions of the International Labor Organization, which has prepared the texts of several agreements on protection of minors subsequently submitted for ratification or accession by other states. Among the most significant we can mention: Convention no. 6 of 1919 on the prohibition of night work in industries for minors of 18 years old; Convention no. 60 of 1937 concerning the minimum age in non-industrial employment; Convention no. 123 of 1965 on child labor in mines.

[2] The founder of the *Save the Children Fund* was heavily impressed by the situation of refugee children in the Balkans and Russia after the First World War and the League of Nations proposed a Charter of rights that involve the states in protecting children.

[3] Article 2, Universal Declaration of Human Rights, 1048.

born in or out of wedlock.[1] Although it is acknowledged of being within the family the natural and fundamental core of the society, this statement is not addressed solely to the child. Moreover, the principles contained therein have not a binding feature and they are equipped only with the programmatic nature of all declarations of rights. However, they always have a high moral value and some of these rules have acquired over time, the value of "*jus cogens*", due to the conscience of the affiliates of the international community, aware of the importance of these provisions proclaiming the fundamental rights.

2. The Need to Give the Child Special Protection

In 1959 the United Nations Organization returns to the theme of childhood rights with the proclamation, from General Assembly, of the **Declaration of Children's Rights**[2] which, extending what had already been established in the **Declaration of Geneva** establishes the rights that must be recognized to the child by the society, "with the aim that every child has a happy childhood and be able to benefit, in its interest and that of the society, the rights and freedoms set forth."

The principle that determined the United Nations states to achieve a document designed specifically for the child was the increased ascertaining of the need to give the child special protection. The declaration itself stipulates that: *"the child, due to his physical and intellectual immaturity, needs special protection and special care, including appropriate legal protection, before and after birth.*"[3]

For the first time in history, the child is recognized as a holder of rights and not as a mere recipient of the decisions of others.

The Declaration of the Rights of the Child, reiterating the principle of equality already established in the **Universal Declaration of Human Rights** states, organically *ten fundamental principles* that must be recognized and guaranteed to all children: the right to a normal and healthy development at physical, intellectual, moral, spiritual and social level, the right to a name and a nationality, the right to social security, the right to special care in case of physical, moral or social minority, the right to family unit, the right to education and play, preference for saving in any circumstance, protection against any kind of exploitation and education for tolerance and peace.

The most important novelty brought by the **Declaration of the Rights of the Child** is present into *two principles*:

1. "*in the adoption of laws, the determining consideration should be the superior interests of the child*."[4]

2. "*the superior interest of the child must be the guide for those who are responsible for his education and orientation*."[5]

For the first time it is expressed the principle "*best interests of the child*". This notion, however, does not have its origin in international law, but was borrowed from internal systems of some states.[1]

[1] Article 25, Universal Declaration of Human Rights, O.N.U., December 10, 1948.
[2] Resolution no. 1386 November 20, 1959.
[3] Declaration of the Rights of the Child, 1959, the United Nations General Assembly, Preamble.
[4] Principle II, Declaration of the Rights of the Child, 1959, "*In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration*."
[5] Principle IV, Declaration of the Rights of the Child, 1959, "*The best interests of the child shall be the guiding principle of those responsible for his education and guidance*."

As the **Declaration of Geneva**, also the **1959 Declaration** has no binding feature. The presented principles represent a reference point for the legislators of singular nations, but they are not specific and precise constraints for states.

Being approved by the humanity and without any abstention it boasts with an extreme moral authority and there are those who argue that its fundamental principles represent nowadays rules of international law.

3. Sources of Law and the Principles on Rights of the Child – the New York Convention

In order to reach in terms of children's rights, at a source of binding international law for the states, it is necessary to wait until 20 November 1989, upon the approval by the United Nations General Assembly, in New York, of the **Convention on the Rights of the Child**,[2] which is even today the most significant source of for the protection of minors.[3]

This Convention highlighted the aspect of recognition of being the holder of child's rights. And although some of the rights introduced in the Convention have already been foreseen in the preexisting international tools, choosing to give a real "status of child rights" not only led to the recognition of new rights and rewriting "suitable for children" already existing rights, but it has also offered specificity to the child, holder of the mentioned rights, requiring national authorities, including judicial bodies, to guarantee respect taking into account the interests of the child.

In order to examine the progress achieved by the participating states in implementing the obligations contracted by the **Convention of New York**, it has been established Committee with the task of monitoring compliance with the Convention.[4] This body has no right to issue rulings or to perform call reports submitted by the contracting states or by individuals for alleged violation of the Convention. The Committee is limited to receive and assess reports that the contracting states are obliged to send on respect of the Convention in their national legislation, and it formulates general comments. Although states reports assessments and general comments are not legally binding, the Committee manages anyway to fulfill an interpretative function of the Convention.

The Principle of the Best Interests of the Child

One of the cardinal principles of the Convention refers to the concept of *best interests of the child*. This principle is drawn as a general principle in art. 3 of the **Convention in New York**: "*In all the decisions concerning children coming from social care institutions, private or public, courts,*

[1] In particularly in *common law* countries, excluding the United Kingdom, where they used the term "welfare", the juvenile *welfare*. But also the ordinances of *Civil law* were common equivalent institutions: appellate court in Italy to protect the child was intended to deviate from the principle of custody of the innocent father or parent, in case of separation of parents.
[2] So far ratified by 194 countries.
[3] There are successive international conventions regarding specific topics, which have repeated the concept of *best interests of the child*, particularly The Hague Conventions of 1980 on civil aspects of international kidnapping of a minor, of 1993 on the protection and cooperation in international adoption and of 1996 concerning parental authority and protection of minors.
Although they are international conventions in the field are mentioned *Guidelines on Determining the Best Interests of the Child* modified by U.N.C.H.R. in 2008, which provides "*The term best interests broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences*."
[4] Article 43, Convention on the Child Rights, New York, 1989.

administrative authorities or legislative bodies, the best interests of the child shall be primary grounds."[1]

The best interests of the child must be considered, above all, as a procedural rule: every time it is needed to make a decision which has as interest a child or group of children, the judge is obliged to consider the possible impact that the decision, whether positive or negative, can have on a child or group of children concerned. It must be regarded as a procedural rule even in the perspective that is inserted as a rule to be followed in decision-making phase, without, however, imposing a solution. The interest of a child cannot be universally identified, but the judge will have to assess from case to case, applying each time this procedural rule.

Secondly, the best interest of the child constitutes the basis for substantive law: the guarantee that this principle will be applied in all cases where a decision must be taken concerning a child or group of children. States Parties have the duty to implement all mechanisms necessary to do so, to be considered *the best interest*, primarily the obligation to introduce legislation requiring judges to assess the interest of the child.

Finally, this principle is a principle of interpretation of law, developed to limit the continuous power of adults upon children. (Zermatten, 2010, p. 26) There are various the difficulties that meet the definition of the concept *best interests of the child:* in this regard it may be helpful to mention a case on corporal punishment in private schools decided by the **Constitutional Court of South Africa** in 2000.[2]

The Court was informed by an association of 196 independent evangelical Christian schools, founded in the United States to promote an evangelical and functional Christian education in South Africa since 1983. The association whose purpose was to "*maintain an active Christian ethos and provide to their learners an environment that is in keeping with their Christian faith*", consists in the constitutionality of a law[3] which prohibited corporal punishment in any school, public or private. According to the Association, corporal punishment in schools, found unequivocal support in several Bible passages and, since this is a "*vital aspect of Christian religion*", the law violates their rights to religious and cultural freedom. South African Minister of Education said it was more the challenge of corporal punishment, and not banning them, which violates the constitutional right, namely the right to respect the dignity of the child.

The problem is thus to determine whether it was in the child's interest to follow the Bible, and to withstand punishment correction, or follow the Constitution and not to be subject to corporal punishment. The Court raised the issue in terms of "*multiplicity of intersecting constitutional values and interests involved in the present matter, some overlapping, some competing*", given that, on the one hand "*the broad community has an interest in reducing violence wherever possible and protecting children from harm*" and on the other hand "*the dignity of the parents may be negatively affected when the state tells them how to bring up and discipline their children and limits the manner in which they may express their religious beliefs*": the child itself "*who has grown up in the particular faith may regard the punishment, although hurtful, as designed to strengthen his character*".

Facing a problem where "*the competing interests to be balanced belong to completely different conceptual and existential orders*", The Court, relying also on diverse international tools such as the Convention of New York, made prevail that "*the state has an interest in protecting pupils from*

[1] Article 3, paragraph 1, Convention on the Child Rights, New York, 1989.
[2] Christian Education South Africa vs. Minister of Education, May 4 2000.
[3] South African Schools Act, 1996.

degradation and indignity", recognizing that "*for believers, including the children involved, the indignity and degradation lay not in the punishment, but in the defiance of the scripture represented by leaving the misdeeds unpunished*".

Another issue on that principle is established by the fact that no one can know exactly what is in the best interest of the child or group of children. In this regard the Committee has drawn a distinction between the best interests of one child and the one of a group of children.[1]

In the first case all decisions concerning child care, his health, his education, must take into account the *best interests*, including the decisions of parents, guardians or other responsible adults for the child. States parties should, however, include stipulations so minor can be represented by a subject acting exclusively, to protect the interests of the child and provisions that provide hearing the child in all cases where he is able to express his opinions and preferences.

In the second case, all the legislative provisions and social policies and all procedures must take into account the *best interests*, including both actions addressed directly to children and those who interest only indirectly minors.

In another important Comment[2], the Committee has stated that the best interests of the child cannot be used to justify a certain behavior, such as corporal punishment or other degrading forms of punishment.

The interpretation of best interests of children must also be consistent with the whole Convention, which enshrines the obligation to protect the child from all forms of violence[3] and the obligation to grant due importance to children's opinions.[4] Even more, in contradiction it would be the achievement of corporal punishments or other forms of cruelty and degrading treatment that violates the right to physical integrity and human dignity of the best interests of children.

Analyzing *the best interests' principle of the child* from a functional point of view, we can identify **two traditional functions:** a first controlling role, and a second role where the best interest is used to facilitate the decisions regarding minors.

In the first role, the child's best interest principle is applied to guarantee that he is able to exercise, in full, his rights. In addition, all actions carried out in decisions on family law matter, child's protection, juvenile migration are necessary to determine whether it was taken into consideration the best interests of the child.

In the second role, the best interest of the child assumes a function of guideline that helps the judge to provide the correct decision. Every time a judge must solve a problem involving a child or group of children will have to seek a solution, systematically, that has the most positive impact on children. In providing such a decision, the judge will have to analyze the situation *hic et nunc*, but he also has to consider the child as an aspiring adult. Taking into account that the child is growing steadily, judges will have to perform a careful analysis of not only the current interests of the child, but also the future ones.

[1] General Comment no. 7 (2006), *Implementing child rights in early childhood*.
[2] General Comment no. 8 (2006), *The right of the child to protection form corporal punishment and other cruel or degrading forms of punishment*.
[3] Article 37, Convention on the Child Rights, 1989.
[4] Article 12, Convention on the Child Rights, 1989.

The Right to be Heard

The contact points are numerous which may be found between article 3, concerning the best interest of the child and article 12 which provides that:

"The States parties guarantee to the child capable of discernment the right to express freely his opinion on any type of problem that interests him, the child's views will be properly considered, taking into account the age and maturity of the child."[1]

The structure of the articles is really the same: both acknowledge, on the one hand, the subjective right of the child to express their his own opinion on a decision concerning him and to be assured respect for his own best interests, and on the other hand require judges to evaluate personal conditions of the child own case by case, avoiding generalized and systematic decisions.

The link between these two articles is obvious: it is inconceivable for a judge making a decision determining the child's best interests, without hearing his opinion on any type of problem that interests him. The minor's right mentioned in Article 12 should be respected and applied whenever the decision is addressed seeking *the best interests* of the Child, enabling the latter to be able to express his own opinion which will be considered based on age and maturity of the child.

The best interests of the child is used, primarily as a criterion to determine the best interests in cases involving only a child, yet would not be fair not considered best interests also in the case involving a group of children. **Children's Rights Committee** stated that: "*The Member states are obliged to consider not only the individual situation of each child when the best interests should be determined, but also when it comes to the interests of children as a group. Extending the obligation also to legislative bodies indicates clearly that each law or regulation concerning children should take into account the best interest of the child principle. There is no doubt regarding the fact that the best interests of children as a group is established in the same way that is defined the one of one child. Therefore it must be given the opportunity to listen to the children in these groups when you want to take actions that directly or indirectly concern these children*."[2]

It is not observed, so no contrast between articles 3 and 12, or more precisely between the first protective approach and the participatory of the second. But we can say that these two articles are complementary.

If article 3 is a type of "ideal" to achieve, article 12 provides a method for determining what a child's best interest is, by allowing the latter to express his own opinion on this "ideal".

This trend was confirmed by the **European Court of Human Rights** in the case *Hokkanen v. Finland* in which it was established that: "*in particular when considering the best interests of the child, the Court places great weight on the exercise of the child's right to freedom of expression and the wishes of the child.*"[3]

The Principle of Non-discrimination

Always children were subject to discrimination: children with disabilities are not treated the same as those without disabilities, children living in rural areas do not have the same rights as those who live

[1] Article12, paragraph 1, Convention on the Child Rights, New York, 1989.
[2] General Comment no. 12, *The right of the child to be heard*.
[3] *Hokkanen v. Finland*, European Court of Human Rights, Strasbourg, September 23, 1994.

in big cities, children of immigrants do not enjoy the same rights as those children who are citizens' children.

For various reasons, children are still more vulnerable than adults to discrimination based on sex, religion, race. For a long time, however, this does not seem to interest any legislator. It is necessary to wait for the **New York Convention on the Rights of the Child** to be protected in general children's rights and particularly to protect children from discrimination.

But the importance of non-discrimination was recognized from the 50s by most of tools of international law and protect of human rights. The 3 major tools of international law and human rights protection, **Universal Declaration of Human Rights**[1], **the International Covenant on Civil and Political Rights** [2] and **International Covenant on Economic, Social and Cultural Rights** [3] enshrines and protects, primarily, the principle of non-discrimination.

The importance of this principle that has been recognized by the United Nations and by the international community in general, it can be confirmed either by the frequency with which this principle is included in the instruments of international law or the reason for which the principle is reserved for any instrument. (Besson, 2005, p. 15)

Basically, children are included and protected from the general anti-discrimination clauses contained in international tools and are thus protected as adults. (Marks & Clapham, 2005, pp. 24-25) However, children often need special protection measures that take account of their particular vulnerability, both on the state and on their families and other individuals. Children, indeed, can be victims of discrimination not only directed against them, but intermediately through their parents.

It can be seen that the principle of non-discrimination was "the principle guide" that led to the recognition of children as rights holders. For a long time, children were not recognized as holder of rights, but in a slow and inexorable manner, these rights have been gradually recognized up to eliminating discrimination between adults and children. The interests of children are now considered as fundamental as those of adults; moreover, it is recognized as children's rights need more protection. A first step towards eliminating discrimination against children has been achieved thus recognizing these topics tenure rights as adults, but a further step was made when they adopted the general clause of non-discrimination contained in Article 2 of the **Convention in New York**.

The fact that this article presents a structure and language similar to other non-discrimination clauses present in various rules of international law reveals the intention of the legislator to align with what has already been set by other normative projections directed to counteract discrimination.

The text of Article 2 shows a very complex structure and needs to be analyzed from several points of view. If in Paragraph 1 child is protected against discrimination based on one of the reasons already

[1] Article 2, paragraph 1, Universal Declaration of Human Rights, New York, 1989.
"*Every individual has all rights and freedoms set forth in this Declaration, without any distinction based on race, color, gender, language, religion, political opinion or any kind, national or social origin, wealth, birth or other condition*."
[2] Article 2, paragraph 1, International Covenant on Civil and Political Rights, 1966.
"*Each state party in the present Covenant undertakes to respect and ensure to all individuals within its territory and which are subject to their jurisdiction, the rights recognized in the present Covenant, without any distinction, be it based on race, color, gender, language, religion, political or any other opinion, national or social origin, economic condition, birth or any other condition*."
[3] Article 2, paragraph 2, International Covenant on Economic, Social and Cultural Rights, 1966.
"*States parties of the present Covenant undertake to guarantee that the rights enunciated in it will be exercised without discrimination, whether based on race, color, gender, language, religion, political or any other opinion, national or social origin, economic condition birth or any other condition.*"

mentioned in paragraph 2, the protection is limited to the person or status of parents, guardians, family members of the child.

Similarly, the rights listed in the first paragraph are only those enshrined in the Convention itself, in paragraph 2, the child is protected, in a hazy manner of "any form of discrimination".

Finally, if paragraph 1 requires both the obligation to respect rights and guarantee protection against discrimination, paragraph 2 foresees exclusively the obligation to ensure non-discrimination.

Even though it presents different points of contact with the preceding clause of non-discrimination, Article 2 of the **Convention in New York** defines a range of innovative character. First, the rule provides protection against discrimination directed straight to child, but also to those based on the duties of parents, guardians, family members. The provision recognizes thus, contemporary, both protections granted to minors, the *specific* one related to its particular vulnerability and the *generic* one recognized for adults.

Secondly, the rule introduces an own and real subjective right addressed to minor children, and it should not be considered as just a pragmatic rule, so it can be invoked by a minor, victim of discrimination. Moving on to the analysis of the scope of Article 2 of the Convention, it is necessary to confirm that, given what is established by paragraph 2 of that article, it extends the scope *ratione materiale* of all rights that may be struck by discrimination and not only those recognized by the Convention.

Scope of *ratione personae* is limited however only to children. By the definition of "child" is necessary to refer to Article 1 of the **Convention of New York**, under which: "*it is understood by child, every human being below the age of 18, except that, under the laws of own state, did not become an adult sooner*."

This provision has been subject to many criticisms because it chooses one end of discrimination between children of different countries. However, all children can invoke Article 2 against the State which ratified the Convention, whether they are citizens of that State or not. Foreign children can then invoke the same way as the citizens, violation of Article 2.

According to paragraph 1 of this Article, indeed, the Convention applies to all children who are under state jurisdiction whether they are foreigners or citizens or have entered the state legally or illegally.

Article 2 but does not define what should be understood by the term "discrimination". **Committee on the Rights of the Child** has not provided in any comment in this definition, however, in its first comment in 2001 determined that:

"*Discrimination exercised openly or not in any of the fields listed in Article 2 of the Convention, offends the human dignity of the child, compromises and even cancels its ability to benefit from the opportunity to education*."[1]

The principle of non-discrimination, often identified with the principle of equality, prohibits treating similar situations in a different way, without an objective justification.

And in the case of children's rights, the principle of non-discrimination can be interpreted as such, prohibiting that similar situations are treated differently and vice versa, different situations to be treated equally.

[1] General Comment no. 11 (2011), Objectives of Education.

However, not always in situations of disparity of treatment, especially when it comes to children, there may be a breach of the principle of non-discrimination. This criterion cannot be used as generalized justification in all cases of discrimination. Sometimes, indeed, it is a discriminatory measure the one that contributes to promoting the best interests of children through strengthening and protection of his rights.

Besides the general criterion of non-discrimination enshrined in Article 2 there are also, within the Convention, rules to ensure special protection for specific groups of children considered, particularly vulnerable to discrimination.

In addition to the protection granted by Article 2, which, as we have seen, applies to all children under jurisdiction of a state, even if they are foreigners, refugee children are protected, specifically, against discrimination in Article 22 of the Convention. In this case it does not produce discriminatory consequences, providing asymmetric protection measures; on the contrary it is necessary to guarantee substantial equality of minors.

Article 23, paragraph 2 and article 30 established the assurance of particular protective and action measures in favor of these two categories of children. The intention is thus the same in all the articles analyzed as a result of ensuring the equality for all children. However a present risk is the possibility for these children to be isolated and stigmatized, risk that should be dammed by social policy provisions directed towards integration.

Along with the Convention on the Rights of the Child, we can also enumerate other similar sources, such as: the Hague Convention on Jurisdiction and the Law on protection of children, the European Convention on the repatriation of children, the European Charter of Children's Rights and the European Convention on Child Rights.

4. Conclusions

Conflicts and political instability are the main causes of a social and economic discomfort that creates a desire to distance itself or to remove their children, still minors, from their native country. Minors take the path to countries that are perceived, at the level of collective image, as being places of wealth and easy gains, image that is destroyed in front of a reality that presents itself as being tougher than expected and in most cases not according to their wishes.

A phenomenon which is usually hidden, that of minor immigrants, becomes "visible" as a result of the exploitation of these children in activities such as: drug trafficking, prostitution, illegal labor and delinquency. But there are not only these situations where minors can be involved, being bigger the picture of possible ways and personal and relational characteristics specific to children who face the travel without parents' company.

The Convention on the Rights of the Child provides the legal basis for all rules directed to children and thus towards minor immigrants. Children get to be in the end, recognized as holders of rights and not just as recipients, as human beings, of protection of provisions of fundamental rights.

The Convention identifies the best interest of the child, framework principle in children's right, principle that must always be placed at the base of decisions involving minors. Foreign minors without guardian, however, live a situation of vulnerability, compounded by the position of being "minor without guardian" and thus bearers of universal rights and with the need for protection, but also

"foreigners", therefore recipients of policies and legislations inspired by principles of control and defense.

It is recognized to children the opportunity to seek asylum and obtain a residence permit, there are numerous violations of the rights of these children who are often detained in centers dedicated to receiving adult immigrants, and as often, victims of the unacceptable practice of rejections.

For these reasons the European Court of Human Rights condemned different European states, identifying patterns of reception and protection often absolutely incapable of protecting immigrants in general, especially unaccompanied foreign minors.

In particular, in placement and detention, where necessary, there should be conducted in appropriate and dignified manner in which it is possible for minors to carry out recreational activities and keep in touch with the outside world; immediately it should be informed in a language he understands, of the opportunity to submit an application for asylum. All these guarantees should find application in terms of minor immigrants regardless of the reasons for entry into the state, be they related to economic or risks of suffering treatments offensive to human dignity in the home country.

Thus it appears in the analysis of migratory phenomena of unaccompanied foreign minors, the need to recognize the full centrality of these children: not "foreigners" to regulate or punish the presence, but minors to be protected by the causes of immigration, such as violence and abuse to which they would be exposed if they are abandoned by the society which sought protection.

5. References

Besson, S. (2005). The Principle of Non-Discrimination in the Convention on the Rights of the Child. *The International Journal of Children's Right*, 15.

Cozma, M. C. (2008). *Justiția pentru minori/Justice for minors*. Bucharest: Universul Juridic.

Marks, S., & Clapham, A. (2005). Children. *International Human Rights Lexicon*, 24-25.

Van Bueren, G. (2007). *Child Rights in Europe, Pushing an pulling in different directions: The Best interests of the child and the margin of appreciation of States*. Council of Europe.

Zermatten, J. (2010). The Best Interests of the Child Principle: Literal Analysis and Function. *International Journal of Children's Right*, 26.

Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989.

(1998). *International Convention on the Rights of the Child, adopted on 20 November 1989 in New York, Published in the official edition "International Treaties", Volume 1*.

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, adopted in Hague on October 19, 1996 in Hague Conference on Private International Law.

(2011). *Children's Rights, As They See Them*, Publications Office of the European Union, European Commission. Luxembourg.

(2014). *Manual of European Law on Asylum, Borders and Immigration,* Agency for Fundamental Rights of the European Union, Council of Europe.

(2010). *Manual of the European Non-Discrimination Law,* Agency for Fundamental Rights of the European Union, Council of Europe.

(2011). *An Agenda of EU for Children's Rights*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Commission. Brussels.

U.N.C.H.R. (1994). *Refugee Children: guidelines on protection and care*. Geneva.

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Principles and Guarantees in the Protection of Refugees

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Abstract: This paper analyzes the key elements of asylum and protection of refugees, the pillars that should support firstly the one in need and, secondly, the states which carry out their activity in this field, through their authorities. We will thoroughly present the fundamental principles, applicable to the claimants of a form of international protection that governs the entire asylum procedure.
Keywords: refugee; principles; asylum; rights

1. Introduction

There is a tight link between a state and its citizen, the citizen fulfilling his obligation towards the state that, in return, guarantees the protection of his rights and of his physical and psychological integrity. Everything coexists in harmony, each party receiving what is due to them, including the reciprocity in respecting the rights and obligations. This peaceful coexistence creates favorable conditions for the development of each individual and accomplishes a balance in the national and international society.

But what happens when the element holding the power in this equation cannot or will not respect the obligation to protect? What can an individual, a loyal and idealistic citizen, when the future, or worse, the right to live, is uncertain? Can that individual seek protection from other states? What are the guarantees when seeking refuge?

The approach to this subject is not random, the interest for the regulation of the protection of a refugee – natural person – being generated by some international political events in which our country was also involved, as member of the European Union. The armed conflicts in Asian countries which forced the civil population to seek protection, giving rise to a big wave of refugees on the territory of member countries, produced discord within the European Union in the context of the necessity of establishing an equilibrium between the state members' efforts for the reception of these people.

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2. The Established Principles in International Legal Acts

1. Access to the asylum procedure – As is provided in the *Universal Declaration of Human*

Rights, all human being are born free and equal in dignity and rights, being gifted with conscience. This primordial element, the conscience, makes us think that people must act towards one another in a spirit of brotherhood.[1] Sadly, there are multiple cases of inhumane behavior inflicted by "rational" individuals on their fellows; in this cases, the contemporary society intervenes, through its legal representatives which, in order to prevent this cruel treatments inflicted by an individual upon other individual and to establish multiple protection methods, have elaborated a national and international legislative frame, favorable to the accomplishment of the goal.

2. The Principle of non-discrimination – principle that has its origin in the *Universal*

Declaration of Human Rights, is set out in multiple articles of this act. The Declaration gives the possibility to all human being, without any type of distinction, to rely on all proclaimed rights [2] and to benefit from equal protection of the law.[3] Later on, this principle was taken up by other conventions in the field of human right and its protection.

3. The Principle of non-refoulement – represents the key element in the protection of refugees. Non-refoulement implies that a refugee must not be re-fouled in a country in which that individual has grounds to fear persecution. This rule is also applied in the cases in which the refugees have legally entered the territory of a host country.

The fundamental document in the international legislation which establishes the principle of non-refoulement is *the 1951 Convention relating to the Status of the Refugees*[4], however, this is also established in the legislation of the European Union which fully respects the provisions of the 1951 Convention relating to this principle and rigorously transposes in its legal acts both the principle of non-refoulement and its exceptions.

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[1] The Universal Declaration of Human Rights, Art. 1.

[2] As is provided in the *Universal Declaration of Human Rights*, Art. 2, "each person can rely on all the rights and liberties proclaimed in the given declaration without any distinction such as race, color, sex, language, religion, political or any other kind of opinion, national or social origin, wealth, birth or any other circumstance. Additionally, no distinction should be made following the political, legal or international status of a country or of a territory whose citizen a person is, regardless if the country or territory in question are independent, under supervision, non-autonomous or submitted to any sovereignty limitation."

[3] Art. 7 of the *Universal Declaration of Human Rights* provides: "all people are equal before the law and indistinguishably benefit from the right to equal protection from the law. All people have the right to equal protection against any kind of discrimination which might violate the present declaration and against any provocation to such a discrimination".

[4] *The 1951 Convention relating to the Status of Refugees* provides, in Art. 33, the prohibition to deport people, which stipulated that: "no contracted state should in no form deport or refoule a refugee over the territorial borders where his life or liberty are threatened on the basis of race, religion, nationality, membership to a particular social group or political opinion."

4. The Principle of confidentiality – the international law relating to human rights guarantees each person the right to confidentiality. This is a principle that governs the entire asylum procedure, having an express provision in the asylum legislation. The general principles that regulate confidentiality require that disclosing information by a third party does not compromise the security of the given person or should not lead to the infringement of his human rights. This principle that governs the right to personal data protection is equally applied to both citizen and to refugees, asylum claimants, and foreigners.

5. Non-application of criminal sanctions – a principle relating to the clauses of non-punishment of the people who were given protection but who illegally entered the territory of the host state. Naturally, this principle is a guarantee against sanctions, as is established in the 1951 Convention relating to the Status of Refugees, only to those refugees that, even if they illegally entered or established themselves on the territory of a country, quickly presented themselves to the authorities in order to expose the reasons of their illegally entering the country. Moreover, these reasons should reflect a life-threatening or right-threatening situation, as is provided in article 1[1] of the same Convention.

6. The principle of the right to information – is not thoroughly provided in the matter of the asylum principles, not having been declared a principle. It is, however, located in the field of the asylum claimant rights, the member states being constrained to respect it. We can conclude that it is, in fact, a rule that is understood from the necessity and the importance of this right, without which the asylum claimant would not be knowledgeable of information and of his rights, partially being denied the necessary protection.

7. The principle of family unity – established in the international and national law, it provides the possibility, or better still, the right of any person, outside national territory, to re-unite his family. In the present paper, given that we analyze the status of refugees, we bring to the table the established provisions in legal acts relating to this field.

3. Applying the Guarantees Relating to the Protection of Refugees in International Law and in Romanian Legislation

The Universal Declaration of Human Rights, through Art. 5, establishes that "no one will be submitted to torture, punishment or cruel, inhumane or degrading treatments"[2]. However, if this provision is broken, any person that is in a situation to be persecuted has the right to seek asylum and to benefit from asylum in other countries. *The 1951 Convention relating to the Status of Refugees*, in addition to the right to the asylum points stipulated in the mentioned legal acts, provides this principle, not in a clearly expressed statement, but deduces itself from the definition of the term "refugee", which indirectly indicates that a person, that is in a persecutory situation, can claim protection.

[1] Article 1 of *The Convention relating to the Status of Refugees,* defines the refugee through exemplifying the situations in which the status of refugee can be granted to certain people: persecution due to race, religion, nationality, membership to a certain social group or political opinions, situations in which he is not inside his country of origin and cannot ask or fears asking for the given country's protection. The same conditions can be applied to a stateless person.

[2] The prohibition of torture is also regulated in the *European Convention of Human Rights,* Art. 3, having its legal basis in the *Universal Declaration of Human Rights* and completely assimilated its text.

In Romanian legislation, this principle is established in Law no. 122 of 2006 concerning asylum in Romania, in chapter II regarding principles and guarantees, Article 4[1], as well as in the Constitution.[2]

Regarding the principle of non-discrimination, we will turn our attention on the regulations regarding the status of refugees. Internationally, *the 1951 Convention relating to the Status of Refugees* established, in Art. 3, that its dispositions will be applied on refugees by contracted states without any distinction regarding race, religion or country of origin. In this respect, the legislation of our country adds some amendments, listing a number of circumstances in which discrimination can intervene. Thus, Law no. 122 of 2006 relating to asylum in Romania, ensures access to the asylum procedure to any person, without any distinction, regardless of "race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, handicap, non-contagious chronic illness, HIV infestation or membership to a disadvantaged category, material situation, birth or acquired status or any other distinction."[3] Even though *The 1951 Convention relating to the Status of Refugees,* in the article dedicated to non-discrimination, briefly specifies the categories to which its prevision unconditionally apply to, the definition of the refugee from the same Convention, eliminates any misunderstanding in this regard, and the term "any person" encompasses a myriad of possibilities, even if unmentioned in the Convention, in which one person can find himself.

Returning to the legislation of our country regarding asylum, we will see that a new term intervenes in this field, namely "vulnerable people", in which minors, unaccompanied minors, people with physical disorders, elderly people, pregnant women, single parents accompanied by their minor children, victims of human trafficking, people with mental disorders, people that were subjected to torture, rape or other severe forms of physical, physiological or sexual violence, or people that find themselves in similar special situations. The law will be applied by taking into account the situation of these persons, after their membership to this category was established by specialists within the General Inspectorate for Immigrations.

As is provided in Art. 78 from The *Treaty on the Functioning of the E.U.*, the Union, regarding the process of developing policies in the field of asylum law and protection in general, be it subsidiary or temporary, must assure the respecting of the non-refoulement principle, in accordance with *The Geneva Convention* of 28th of July, 1951 and with the Protocol of 31th of January, 1967, concerning the status of refugees as well as with other treaties in the field. In this regard, amendments also were drawn by European Union's Directives in this field, which establish: the conditions that should be fulfilled *by the nationals of* third party countries or stateless persons in order to acquire international protection; granting and withdrawing international protection, as well as standards for receiving claimants of international protection. In what the non-refoulement principle is concerned, only the 2011/95/EC Directive especially provides it in article 21 which, at the same time, allows state

[1] "The competent authorities ensure access to the asylum procedure to any foreign citizen or stateless person which find himself on Romanian territory, from the moment in which willingness, in this regard was show, expressed in writing or orally, from which it can be deduced that the person in question is claiming protection from the Romanian state, with the exception expressly provisioned in the present law."

[2] Art. 11 paragraph. (1) "the Romanian state is bound to fully and in good-faith fulfill the obligations provided in the treatises to which it is party";
Art. 18 paragraph (2) "the right to asylum is granted and is withdrawn respecting the law, the treaties and the international conventions to which Romania is party";
Art. 19 paragraph (3) "foreign citizen and stateless people can be deported only on the basis of an international convention or in the conditions of reciprocity";
Art. 20 paragraph(2) „if there are discrepancies between the pacts and the treaties relating to fundamental human rights to which Romania is party, and internal laws, international regulations have priority, with the exception in which the Constitution or the internal laws contain more favorable dispositions".

[3] Art. 5 Law no. 122 of 2006 regarding asylum in Romania.

members to refoule a refugee, regardless of whether he is officially recognized as such or not, in the cases in which there are reasonable motives to think of him as being a danger for the security of the state member in which he is established or if he was convicted by a final judgment of a particularly serious crime[1] and constitutes "a danger for the community of that member state.

We find the exception of the principle of non-refoulement both in the *1951 Convention relating to the Status of Refugees*, as well as in our own national legislation. These provide similar condition to those of the European Union's[2] *211/95/EC*[3].

The prohibition of refoulement is widely accepted as part of international customary law. This means that even the states that are not parties of the Convention relating to refugees, must respect the principle of non-refoulement. When this principle is broken or risks of being broken, UNHCR reacts through an intervention alongside the competent authorities and, if necessary, inform the public opinion.[4]

The principle of non-refoulement of a refugee is a solid guarantee which any person who is persecuted or seeks international protection, can have, regardless if he is a third party national or a stateless person, regardless of race, religion, sex or origin, without suffering any discrimination in any respect. This principle offers the security that that person will not be deported, without a well determined reason, in his country of origin or in other places, where his life can be in danger or where there is the risk that he be submitted to inhumane treatments or torture.

The right to personal protection and the confidentiality request are extremely important for asylum claimants, their request being motivated by the fear of being followed by their country of origin's institutions and whose situation can worsen on the basis of a lack of information protection.

Disclosing personal data or other information regarding to asylum claimants from their country of origin is contrary to the spirit of the *1951 Convention relating to the Status of Refugees.*

Taking into account all of the above, the state that receives and evaluates an asylum request must obtain from disclosing any information to the claimant's country of origin or to even notify them that an asylum application was submitted by a citizen of that country. This principle is applicable regardless of the fact if the asylum claimant's country of origin is seen as safe or if the asylum application was submitted for economic reasons.

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[1] According to Romanian state's Law 122 of 2006, by serious infringement "any willfully committed crime for which the law provides the punishment of imprisonment, whose special maximum is of over 5 years"

[2] The 1951 Convention provides that: "1. The contracting states will not refoule any refugee that legally finds himself on their territory, unless national security or public order are in danger; 2. The refoulement of a refugee will only take place following the enforcement of a judgment, adopted in accordance with the procedures provisioned by the law. The refugee should be permitted to present evidence in his defense, to appeal, and to be represented in this respect in front of a competent authority or in front of one or more specially assigned person/s, being assigned by the competent authority, unless overriding reasons concerning national security are opposed; 3. The contracting states will grant to this type of refugee a reasonable time in order for that person to try to be legally admitted in another country. The contracting states can apply, within this deadline, the internal measures which they will find as being appropriate". The law relating to asylum in Romania establishes the motives for deportation in article no. 6, paragraph 3, in which it is specified that a person that was recognized as being a refugee or to whom subsidiary protection was granted, can be deported from Romanian territory if: a) there are well determined reasons that the given person can be seen as a danger to Romanian state security; b) the given person, being convicted for a serious crime by a final judgment is a treat to Romanian public opinion."

[3] The 2011/95/EC Directive provides the standards regarding the conditions which the nationals of third country or stateless person must meet in order to benefit of international protection, at an equal status for refugees or for eligible persons in order to obtain protection.

[4] Kate Jastram, Marilyn Achiron, UNHCR "*Protecția refugiaților, Ghid cu privire la dreptul internațional al refugiaților/Protection of Refugees, Guidelines on international refugee law*", p. 16.

Article 25 of *The Convention relating to the Status of Refugees*, article which is referring to administrative assistance, also mirrors that an asylum claimant cannot rely on his country of origin's protection, thus being protected from the risk of being followed, in case of being contacted by the country of origin's bodies. The Establishment of this principle is found not only in the international legislation, but also in Romanian internal legislation. Law no.122 of 2006 concerning asylum in Romania methodically provides the obligation of all authorities concerning confidentiality, in the sense that all the data and information relating to the asylum application are confidential. The Romanian state's authorities, especially those who activate in problems regarding asylum, having direct access to information about asylum claimants, are not allowed to disclose these personal data, not even to the state whose citizen is the claimant of a form of international protection. Leaking these kind of information to third parties conflicts the right to life, the physical and psychological integrity of the given persons being placed in danger. Of course, the obligation to respect the principle of confidentiality is not imposed only on the Romanian state's authorities, but also on organizations that carry out activities in the field of asylum or of third parties involved in the asylum procedure that, accidentally, enter in the possession of these acts.[1]

However, in the national norm relating to the status of refugees, other categories of persons which have to respect the principle of confidentiality are established, the criminal law sanctioning only the person that, through the virtue of their profession or their function, are obliged to keep confidentiality[2] and not disclose secret professional or non-public information.[3]

The underlying condition for invoking the principle of non-enforcement of criminal sanctions is established on granting a form of protection. The person that broke the legislation of the state in which he illegally entered in order to avoid being sanctioned, must be granted one of the protection forms which can be granted by the given state.

The Romanian legislator established in the Criminal Code that illegally entering or exiting the country is a crime, punishable with imprisonment for 6 month to 3 years, or with a fine. The situation is more serious in case of solicitation, guiding or instructing one or more persons, having the goal of illegal entering a state's frontier, is, likewise, a crime and organizing such activities is punishable with imprisonment from 2 to 7 years. The person that illegally enters the territory of our country and subsequently does not declare their intention of obtaining international protection by illegally remaining on Romanian territory, suffer the same criminal sanctions mentioned above, but also other contraventions provided in Romanian legal acts[4]. Indeed, there are cases in which immigrants are caught in the process of committing the crime of clandestinely passing the frontier, wanting to enter Romania in order to reach the countries in the Schengen area in order to find a job. In this case, the law does not distinguish between illegally transiting the territory of a country or illegal residence, in both situations, the persons caught committing this crime are punished according to effective norms, the main cause of applying a punishment being the illegal crossing of a state's frontier, committed regardless of the goals of the criminal.

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1 Art. 10 Law no. 122 of 2006 concerning asylum in Romania.

2 Art. 227 Criminal Code provides that: "(1) Wrongfully disclosing data or information concerning a person's private life, that can bring damage to a person, by the person that was informed of these due to his profession or function and that has the obligation to keep confidentiality of these data, is punishable with imprisonment, from 3 months to 3 years or by fine."

3 Art. 304 Criminal Code: „(1) Wrongfully disclosing secret professional information or information that are not destined to be published by that who know them due to their profession, is by this the interest or the activity of a person are affected, is punishable by imprisonment from 3 months to 3 years."

4 See O.U.G. 105 of 27th of July 2001 art. 68 -77. The Order repeals the whole of sanctions that provide liberty deprivation, placing them at the legal provisions of criminal law, being introduced, in light of the amendments of the criminal code, in the chapters that regulate crimes concerning authority and the state's border.

Thus, in the situation in which one illegally enters Romanian territory, the given people, caught in due time, are turned to the authorities of state from which they entered and, moreover, a criminal file is drawn for committing the crime of illegally crossing a state's frontier. Romanian authorities face such crimes often in the context of migrations that have begun in the last year. We can exemplify some cases which happened at the beginning of this year: on the 15th of January, the police found two Syrian citizen that were trying to illegally enter Romania at the border crossing point Calafat-Vidin Feroviar. The police immediately launched the procedures for interrupting their journey and, according to the Romanian-Bulgarian protocol, the two immigrants were taken by the Bulgarian Border Police in order to continue the investigation and the enforcement of the necessary legal measures.[1]. A similar faith was met by other 60 immigrants of different nationalities, who were subsequently caught, in the same day, when wanting to enter from Serbia into Romania through the Comlosu Mic locality, Timis county, these being from Pakistani, Afghanistan, Iraq, Somalia and Morocco. Following their statements, in which they claimed to be headed for the Schengen area in order to find a job, readmission documents were drafted in order to surrender them to Serbian authorities and to draw up criminal files for committing the crime of illegally crossing the border of a state[2].

In the majority of cases that the police force have confronted, the immigrants were surrendered to the state from whose territory they directly entered Romania and criminal files were drawn against these person for the crime of illegally crossing a state's frontier. In consequence, as long as international protection has not been requested by these people, the principle of non-application of criminal sanctions could not be enforced, as both the *1951 Convention* relating to the Status of Refugees, and that of Romania, provides.

Even though the *1951 Convention relating to the Status of Refugees* does no refer to the principle of the right to information, The European Union provides in the 2011/95/UE Directive[3], the right to information by providing by all state members the information concerning the rights and obligations of the persons that fall in this category, in a language that they are supposed to reasonably understand. The difference between the instruction of this Directive and those transposed in our national legislation concerning the status of the refugee is that the right to information, in Romania, is awarded to the foreigner that requests the granting of this form of protection, but also subsequently, during the asylum procedure[4] and not after the status of the refugee is granted, as the Directive provides, through article 22.

Thus, taking into consideration the importance of the right to information, that any person that fulfills the conditions provided in the 1951 Convention relating to the status of refugees, the party states who were asked for international protection much supply the asylum claimant information that encompass the wording of the asylum application as well as the whole procedure, the rights and also the obligations that they must respect during the process of the asylum procedure. Moreover, they can be

[1] http://www.ziare.com/stiri/frontiera/doi-cetateni-sirieni-au-incercat-sa-intre-ilegal-in-romania-aveau-acte-spaniole-dar-nu-stiau-o-boaba-de-spaniola-1404390.

[2] http://www.ziare.com/invazie-imigranti/romania/ce-s-a-intamplat-cu-cei-60-de-migranti-care-voiau-sa-intre-in-romania-1404645.

[3] See article no. 22 of the 2011/95/UE Directive that indicates the standards regarding the conditions that the nationals or stateless persons have to meet in order to benefit from international protection, an equal status for refugees and for eligible people for gaining protection.

[4] Law no. 122 of 2006 art. 17 paragraph (f) "the right to information, from the moment of submitting the application or subsequently, within 15 days after the application was submitted, in a language that they understand or that they reasonably understand, regarding the procedure that must be followed, the rights and the obligations that they have during the asylum procedure, relating to the consequences of breaking these obligations and the lack of cooperation with competent authorities, as well as the consequence of the explicit or implicit withdraw of the application."

given contact information of organizations and institutions that can offer assistance to the people in need of protection.

Having its foundation on *The Universal Declaration of Human Rights,* which stipulates that "family is the natural and fundamental group of a society and that has the right to be protected by the state society", the majority of international organizations in the field of human rights contain similar provisions for the protection of family unity.[1] Following the recommendations made by the final Act of the Conference that adopted the *1915 Convention,* the majority of states, that are or are not part of it, respect and guarantee the principle of family unity. Thus, the members of a family, based on this principle, can be granted the refugee status in case only one family member was already granted a form of protection.

Although *The 1915 Convention* does not contain the principle of family unity, regardless, all states, including the European Union, introduced in its norms that provide the status of the refugee or the procedures and conditions for obtaining a form of protection, the principle that guarantees the right to family unity. The European Union's legislation establishes this principle as being mandatory in article 23 of the 2011/95/UE Directive that provides that member states will ensure that family unity can be maintained in the situation in which a person was gained a form of protection. As we conclude from the established points, the main condition in order to gain protection for family members is acquiring the refugee status or another form of protection[2], but not during the asylum procedure.

Regarding family members that can be included in the establishment of this principle, Law 122 of 2006 relating to asylum in Romania, established that these are, firstly, the husband or wife and unmarried minors. Likewise, no distinction is made between the minor born within a marriage or outside one, as well as if the minor is the child of only one spouse or of both married people.

There are cases in which the principle of family unity cannot be respected, having the same conditions for protection against deportation as any other asylum claimant. These are cases in which there are serious reasons to think that the person in question committed a crime against peace, war crime or a crime against humanity or another serious crime before requesting international protection or if that person represents a danger to the requested state's security. Therefore, if the person, a member of a refugee's family and for whom family unification was requested, enters under the incidence of the crimes mentioned above, should not have access to the refugee status.

The massive income of immigrants and the desire to control the situation that seems out of control, incites state members to adopt controversial amendments in legislation relating to the status of refugees. One example in Denmark that lately, ignoring critics, adopted the reform of the asylum system, which, along with confiscating the asylum claimants' assets, provides diminishing of social aids as well as the time-frame for reuniting the family of the asylum claimants from 1 to 3 years. The first step, made by Denmark, is enough for other states to request legislative amendments in the field of asylum in order to facilitate the management of this phenomenon.

[1] UNHCR "Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status"

[2] Under the terms of Law no.122 of 2006 art. 22 in Romania, foreigners are given a few forms of protection: a) the status of refugee is recognized; b) subsidiary protection is granted; c) temporary protection is granted.

4. Conclusions

In the given paper, whose subject is inspired by events that have taken place in Europe on the basis of the migration process of population whose country of origin is under fire, we tried to highlight the principles that govern the whole system of the refugee protection. At the same time, we compared the international norms with those of our country in this respect, that refer to the status of refugees, the procedure for receiving a form of international protection, and, lastly, the rights and obligations of both the asylum claimant as well as of those who received protection after being declared refugees.

Thus, we observed that some of the laid out principles were not expressly provided in the international norm relating to refugees but that are specified in the national norm, that also underlines the sanctions applicable in case of breaking the rules that were analyzed in the present paper, namely: the principle of confidentiality and the principle of non-application of criminal sanctions.

The necessity of establishing principles was generated by the desire to find a safe way to protect the persons that lack protection from their state of origin, the principles being, thus, a solid reason for them to seek refuge. At the same time, these allow states that receive asylum application to protect their own citizens through the exceptions mentioned within the same principles.

Respecting the principles that govern the asylum field guarantee the refugee the protection of the fundamental rights established through *The Universal Declaration of Human Rights* and other international norms, firstly the right to life and physical integrity through access to the asylum procedure, without any discrimination. Thus, any person that finds himself in the situations analyzed in the present paper, extracted from the Convention relating to the status of refugees, has the right to ask permission to find refuge in another state when protection from their state of origin is lacking, as well as the fact that they cannot be deported without a well-defined reason in a country in which there are reasons to believe that their lives are in danger. Thus, we can say that these regulations are welcomed in the asylum field. However, the recent amendments in national legislation regarding the principle of non-application of criminal sanctions raises questions regarding the period in which this can be applied. We can state that, in the context of the migration process and taking into consideration that massive intake of immigrants, legislative tightening are meant to protect a country's own citizens.

From the analyzed facts, we deduce that, also within the non-refoulement principle, in the exceptions chapter, some tighter amendments are welcomed, for the purpose of deporting a claimant the moment he was found guilty of a crime committed on the territory of the state that offers him protection and not be imprisoned for less than five years, as it is stipulated in the national legislation.

This amendment is not a sign of discrimination but rather a sign of the state protecting its own citizens but also good-faith, peaceful refugees. On the other hand, it is fair to want that our country's laws are respected, as well as the values of the Romanian people. It is our right to be protected but to also be our own masters in our country, to be respected by any foreigner regardless or race or other ideologies.

5. Bibliography

Jastram, Kate & Achiron, Marilyn UNHCR (2001). *Protecția refugiaților, ghid cu privire la dreptul internațional al refugiaților/Protection of Refugees. Guidelines on international refugee law.* Ghid pentru parlamentri/Guide for MPs no. 2, Official Monitor.

Drăghici, Andreea (2013). *Protecția juridică a drepturilor omului/ Legal protection of human rights.* Bucharest: Editura Universul Juridic.

Drăganu, Tudor (1998). *Declarațiile de drepturi ale omului și repercusiunile lor în dreptul internațional public/ Declarations of human rights and their repercussions in international law*. Bucharest: Lumina Lex.

Ciucă, Aurora (1998). *Protecția internațională a drepturilor omului/International protection of human rights.* Iasi: Sanvialy.

Chiriță, Radu (2007). *Convenția europeană a drepturilor omului. Comentarii și explicații/European Convention on Human Rights. Comments and explanations*. Vol. II. Bucharest: C.H Beck.

Popescu, Corneliu-Liviu (2000). *Protecția internațională a drepturilor omului/International protection of human rights*. Bucharest: All Beck.

Stoica, Florentina Camelia (2009). *Dreptul Uniunii Europene, libertățile fundamentale/European Union law, fundamental freedoms.* Bucharest: Editura Universitară.

Gheorghe, Marian (2004). *Omul și drepturile lui/Human being and his rights*. Arad: Editura Universității Aurel Vlaicu.

Duculescu, Victor (2008). *Protecția Juridică a Drepturilor Omului/Legal protection of human rights*. Bucharest: Lumina Lex.

Directive 2011/95/UE on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.