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The Immigrant's Legal Status in International Law

The Protection Granted to Refugees in Romania

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Abstract: In this study we will extract from the norms referring to refugee status the types of protection that can be granted to an asylum seeker in Romania and the necessary conditions for obtaining them. We will also analyze the forms of protection in order to understand in detail the differences between them. Thus, in Law no. 122 of 2006 on asylum in Romania are precisely specified three forms of protection that could be offered to an asylum seeker. The legislator can recognize refugee status and may grant subsidiary or temporary protection. At the same time, the rights and obligations of the beneficiary of a certain form of protection will be extracted from the existing rules. In this respect, it will be possible to differentiate between the asylum seeker, the beneficiary of a form of protection and a foreigner who is not in the above-mentioned situations. The difference between the first two categories of persons and the latter is presented in the national legislation itself, the statute of which is separately regulated in distinct laws.

Keywords: refugee; protection; migration; asylum

1. Introduction

In general, a refugee, as provided for in the 1951 Convention, is a person who is in a situation of being persecuted because of race, religion, nationality, belonging to a particular social group, or his political opinions, as well as other grounds listed in national rules, causing fear for his and his family's safety. However, they can request asylum and other categories of people who are not considered refugees but still need protection. However, the dilemma relates to explaining terms such as refugee, asylum and protection in a larger context and trying to understand the differences between the forms of protection generated by the situations in which category a person is.

Addressing this issue is not by chance, the interest in regulating the protection of the individual refugee was generated by some international political events in which our country was also drawn as a member of the European Union. Armed conflicts in the countries of the East have forced the civilian population to seek protection, thus generating the arrival of a large wave of refugees in the territories of the Member States, have created divergences within the European Union, in the context of establishing a balance between Member States' efforts to receive such persons. The massive influx of displaced persons and the refusal of the Member States to assume the responsibilities and consequences of this reception have led to some drastic decisions by the European Union, with quotas

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of refugees being made mandatory for each Member State. Romania's obligation to obey and accept the quotas of refugees, established by the European Union, without taking into account the capacity of the Romanian state to receive them and to provide minimum conditions of existence. Both curiosity and indignation have made us start looking for answers to a significant number of questions related to this theme, namely: who are actually migrants and refugees? Is there any difference between them, their rights and obligations? Are all, without exception, entitled to protection?

2. Forms of Protection Granted to Immigrants, according to the Romanian Legislation

2.1. Recognition of Refugee Status

Article 23 of Law no 122 of 2006, which regulates asylum in Romania, "*recognizes the refugee status, upon request, to a foreign citizen who, following a well-founded fear of being persecuted on grounds of race, religion, nationality, opinion or affiliation to a particular social group, is outside the country of origin and who cannot or, because of this fear, does not wish to claim the protection of that country, and to the stateless person who, for the reasons mentioned above, outside the country in which he resided cannot or, because of this fear, does not want to return to that country and to whom it does not apply the causes of exclusion from the recognition of refugee status laid down by this law shall not apply."*

The first requirement to fulfill this form of protection is extracted both from the above-mentioned article and from the 1951 Convention which is the fundamental act in regulating this area. Thus a foreign citizen or a stateless person who makes a request for obtaining international protection from the Romanian state must be in the fear of being persecuted on the grounds of:

- Race;
- Religion;
- Nationality;
- Political Views;
- Belonging to a certain social group;

There are also other important the elements that would make it easier to obtain protection:

• He is outside the country of origin;

• He cannot or does not want to claim protection from the country of origin because of fear.

Our attention will, however, rather stop on the combination of words "well-founded fear" which, in the opinion of some authors, is the key element in this definition under which refugee status is established. The notion of fear is subjective, the definition involves the presence of a subjective component to the person requesting to be recognized as a refugee. Therefore, the determination of refugee status will consist more in assessing the applicant's statements than in judging the existence situation in his or her country of origin.[1] The "fear" that reflects the mood of the person in need of the help is given the term "well-grounded" that judges the gravity of the situation on a case-by-case basis, or whether the applicant's fear is well founded.

In order to properly assess the real condition of an applicant for international protection, it is not enough just the existence of the subjective element that concerns the fear of being persecuted for the

[1] UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 19.

reasons set out in the definition. Without an in-depth analysis of the circumstances that led to the creation of a state of fear, it could be appreciated by the person in need more intensively than it would be, misleading the competent authorities designated to establish the status of refugee. Therefore, the competent authorities who are called upon to determine refugee status are not required to judge the conditions of the applicant's country of origin. However, the applicant's statements cannot be considered abstract, but should be considered in the context of concrete situations. Knowledge of the conditions of the applicant's country of origin is an important element in assessing the credibility of the applicant. In general, the applicant's fear must be regarded as well-founded, if he can reasonably determine that his continued stay in the country of origin became intolerable for himself for the reasons indicated in the definition or it would become intolerable for the same reasons, if he was to go back.[1]

2.2 Granting Subsidiary Protection

Subsidiary protection comes in addition to the first form of protection discussed previously in the present paper. Considering that the granting of refugee status depends on the fulfillment of conditions strictly listed in the 1951 Convention, there is the possibility for the persons in need, but not falling within these requirements, will remain without support. This form of protection is granted to an asylum seeker, a foreigner or a stateless person, if he / she does not qualify for refugee status but is likely to be in serious risk of returning to the refuge's country of origin or where they were habitually resident. The Convention on Refugee Status does not provide for this form of protection. However, in international law there are a large number of conventions and treaties created in order to protect the individual against the application of ill-treatment as well as respecting the rights of an individual.

The Romanian State according to art. 26 of Law No 122 of 2006 on asylum in Romania "*grants to a foreign citizen or stateless person who does not fulfill the conditions for the recognition of refugee status and on which there are reasonable grounds for believing that in case of return to the country of origin, the country in which he or she was habitually resident would be exposed to a serious risk within the meaning of paragraph 2 which cannot or, due to that risk, does not want the protection of that country and does not apply to the exclusion from the grant to this form of protection provided by this law."* By comparing both rules on refugee status, we conclude that the 1951 Convention leaves it up to States to extend the arrangements and forms of asylum. This, compared to the Romanian law, provides only a way to provide protection to an asylum seeker, namely refugee status.

We note that in both cases and here we refer to forms of protection, both in the case of granting refugee and subsidiary status, the asylum seeker is in a position to fear for his life and to be outside the state of origin. Here the difference between these two forms of protection is generated by the totality of circumstances that have led to the induction of the fear of an applicant. Thus, the novelty of subsidiary protection is that it can be offered to people who do not fall within the notion of refugee. In this sense, those who risk being persecuted for reasons other than those provided for in the 1951 Convention, race, religion, nationality, political opinion or belonging to a social group fall within this form of protection provided that they believe will be exposed to a serious risk when returning to their home country. The national rule continues at the second paragraph of Art. 26, on subsidiary

[1] UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 21.

protection, explaining the term "serious risk", namely: "*serious risk, within the meaning of para. (1) shall be understood as:*

1. *sentencing to death penalty or execution of such a punishment*; or

2. torture, inhuman or degrading treatment or punishment; or

3. a serious, individual threat to life or integrity as a result of generalized violence in situations of domestic or international armed conflict, if the applicant is part of the civilian population."

Under the provisions of paragraphs 2 and 3, it is natural to grant protection, provisions of this kind being governed by international rules. Here we mention the "Universal Declaration of Human Rights" and the "Convention for the Defense of Human Rights and Fundamental Freedoms" which guarantees to every human being the right to life, liberty and security. Here too we find provisions condemning torture or cruel, inhuman or degrading treatments.[1] Other provisions on the protection of individuals against torture are also found in the "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" which states that "torture" is represented by any act intentionally caused by a person, in order to produce a strong pain or suffering of a physical or mental nature in order to obtain information or confessions from that person or to punish it. Taking into account the aforementioned regulations, we can say that the form of subsidiary protection is a guarantee for an asylum seeker in one of the situations provided in paragraphs 2 and 3 of the second paragraph of Article 26 of the law on asylum in Romania

The above-mentioned situations regarding the fulfillment of the term "serious risk" for a person to be entitled to the request for protection are clear and do not raise any questions. However, another is the situation when an applicant for a form of protection is sentenced the death penalty or the execution of such a punishment. Here are some doubts as to the interpretation of this point, and some research needs to be done to answer some questions, namely: Under what conditions can a person sentenced to the death penalty receive protection?, Is it possible for a person to receive protection even if he has committed deeds in cases of exclusion and was sentenced to death?

In principle, it can be determined whether or not a person sentenced to death can receive protection only after the situation has been analyzed and whether it is a serious offense or not. The designated authorities have an obligation to verify the circumstances in which the offense was committed and the seriousness of the offense. The capital punishment is applied so far in some countries. In addition to serious crimes such as murder, rape or betrayal, drug trafficking is punished with death in 32 countries. There are also facts that we would not expect to be punished so hard. For example, in most Muslim countries, sexual offenses are punishable by death. For example, in Yemen a person can be sentenced to death for adultery, and in Bangladesh for pimping. Homosexuality is being punished with death in several Muslim countries, and in Saudi Arabia the death penalty can be waged for witchcraft. Businessmen have to be very careful in Vietnam and China, where embezzlement is punished with death, as well as corruption and bribery in Thailand and China.[2]

The comparative analysis shows that an asylum seeker who has committed an offense punishable by death before entering the territory of Romania can obtain subsidiary protection. Obtaining protection in these situations is conditioned by the gravity of the offense and the circumstances in which it was committed. If we take into account the examples of Yemen, Bangladesh, Saudi Arabia, which are

[1] Art. 3, 5 of the Universal Declaration of Human Rights and Art. 2, 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[2] http://www.romanialibera.ro/actualitate/international/unde-si-pentru-ce-poti-fi-condamnat-la-moarte-315363

punishing with death some of the facts considered as serious crimes on the territory of these countries, we can say that the applicant is entitled to ask for protection, especially since the deeds described do not present serious criminal offenses and no social danger in European countries. Moreover, facts such as adultery, homosexuality and witchcraft are not considered as crimes in the national law.

The answer to the second question, which relates to the possibility of obtaining subsidiary protection by an applicant sentenced to death, but falls within the exclusion cases provided for in the Convention in Art. 1 letter F[1], will definitely be negative. The first reason for refusal is focused on the context of asylum rules. Even if an applicant at first instance would qualify for inclusion, namely the reason for the death sentence, he would be excluded after the analysis of the facts. In general, all rules on asylum are specifically designed to protect victims, not to protect perpetrators. Another reason for denying the grant of subsidiary protection can be derived from the Convention for the Protection of Human Rights and Fundamental Freedoms which, while proclaiming that the right to life is protected by law, comes with an argument in favor of causing a person to die intentionally only in situations in which has them executing a sentence passed by a court, when the offense is sanctioned with this punishment by law.[2] The evidence to support the above is Law no. 10 of the Control Council for Germany of 20 December 1945 and the Statute of the International Military Tribunal. Both documents provide for some offenses for which capital punishment can be applied (Annex 4). The 1951 Convention refers to these offenses when determining the grounds for exclusion from any form of protection.

Thus, having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, which recognizes the death penalty, provided that it is delivered by a court, we conclude that a person who has committed crimes of the kind referred to in Article 1 F of the 1951 Convention could receive subsidiary protection by giving cause for death as a reason, because in these situations prevails the deeds committed and the punishment legally established for them. Thus, an applicant cannot claim to be in danger due to a death sentence passed by a court following war crimes, crime against peace or humanity as defined in the international instruments on such crimes.

2.3. Granting Temporary Protection

This last form of protection is granted only in exceptional cases. If refugee status or subsidiary protection is granted following an individual file analysis, meaning that protection can be provided to one person and then to his / her family upon request, then temporary protection refers to a group of persons who are in the same situation the person would urgently need asylum. The Council Directive 2001/55/EC[3] of 20 July and Law no. 122 of 2006 on asylum in Romania provide that "*temporary protection*" means "*an exceptional procedure designed to ensure, in the event of a massive influx or imminent inflow of displaced persons from third countries who cannot return to their country of origin immediate and temporary protection of such persons, in particular where there is a risk that the*

[1] This article refers to cases of exclusion from protection:
the provisions of this Convention shall not apply to persons on whom there are serious grounds for believing:
(a) they have committed a peace crime, a war crime or a crime against humanity, within the meaning of international instruments designed to provide provisions on such crimes;
(b) have committed a serious common law offense outside the receiving country, before being admitted by that person as a refugee;
c) that they have been guilty of acts contrary to the purposes and principles of the United Nations.
[2] Article 2, paragraph 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms.
[3] This Directive concerns the minimum standards for granting temporary protection in the event of a mass influx of displaced persons and measures to promote a balance between Member States' efforts to receive such persons and to bear the consequences of such reception.

asylum system will be unable to manage this flow without adversely affecting its effective functioning in the interests of those concerned and other persons who require protection".

So, by definition, temporary protection is provided in special cases where states are forced to receive a massive influx of people and are at risk of having problems when managing this influx. Of course, according to the Directive, the requesting group must fall within the scope of art. 1 A of the 1951 Convention, but also provides for other situations of temporary protection such as leaving an area of armed conflict or endemic violence or being exposed to major risks as well as victims of systematic or generalized violations of human rights. This type of protection may be granted for a period of one year with the possibility of automatically extending that period for a period of 6 months or a maximum of one year, in cases where the reasons for granting temporary protection have not ceased.

Finding a massive flow of displaced persons is determined by a decision of the European Union Council. Of course, the signatory states will be able to receive persons who are eligible for temporary protection only after the Council of the European Union and the European Commission - in figures or in general terms - communicate their capacity to receive such persons. The Directive also provides that States that can receive a larger number of people than previously announced will again notify the Council and the Commission of additional reception capacities. However, the situation faced by the European Union has recently been overcome by forcing Member States to take a far greater number beyond their possibilities. This was allowed by the Directive by art. 25 par. (3) which states that "*in cases where the number of persons who may benefit from temporary protection following a massive influx exceeds the reception capacity referred to in paragraph 1, the Council shall urgently examine the situation and take appropriate action, including recommending additional support to the affected Member States"*.

Thus, in order to overcome the crisis caused by the excessive number of displaced persons and who cannot return to the country of origin, the resettlement of refugees was established at the level of the European Union through two mechanisms of refugees' quota. The quotas established by the first resettlement mechanism in July 2015 in Brussels were made on the basis of Art. 25 par. (1) of the Directive in which states were able to indicate their ability to receive such persons. For example, at this stage Romania presented a figure of 1,785 refugees, with the arrival of a number of 1,705. Until this moment, we would be tempted to say that the Romanian state has complied with its obligations under the Directive and that the country's economic situation and its ability to receive a certain number of refugees should be considered, however, taking into account the fact that, the odds were almost exceeded by almost 200 people. Romania has only 6 functional centers for refugees and asylum seekers, which can accommodate only 1500 people.[1]

However, the crisis of the massive refugee flow has not been overcome, the European Union has to confront a huge wave of people seeking protection. Greece and Italy were the most affected by the geographical location being the first states of the Union to enter the sea. In order to support the affected Member States, the Council of the European Union establishes binding quotas through the second allocation mechanism in September 2015, thus spurring among Member States, as not all have agreed to these binding quotas. In this respect, Romania has a final quota of 6,351 refugees at this time. According to the information sources, the second mechanism for relocation of 120,000 refugees is to be carried out in two stages, two years, in the first year Romania will receive 2,475 refugees, in addition to the 1,705 agreed by the first mechanism. In the second year, according to the agreed rates,

[1] http://www.gandul.info/stiri/primii-refugiati-au-ajuns-in-romania-marea-problema-pe-care-tara-noastra-trebuie-sa-o-rezolve-pana-la-anul-15095267

but which can be changed, there are 2,171 refugees left to receive. The other states will receive refugees in the first part of the relocation mechanism according to the tables in Annex 5.

In spite of all efforts to close the immigration route from Turkey to Greece, the "International Migration Organization" reports on the increase in the number of immigrants in this way, and this time there are signs of an increase in the number of people in Sub-Saharan Africa[1]. Taking into account that all immigrants want to reach the European Union, there is the possibility of establishing a permanent mechanism for the resettlement of refugees and thus establishing binding quotas as proposed by Germany to the European Council in October 2015[2]. Will it be accepted or not the establishment of this permanent resettlement mechanism? It remains a question mark. It is certain that some states of the Union, including Romania, are opposed. In our country, the prime minister declared firmly in March 2016 that Romania maintains its position of not accepting mandatory refugee reception rates.[3]

The A.V. Case from Iran

History: A.V. is from Iran, left his country of birth at age 7, grew up in Romania with his whole family. The father and one of the sisters are Romanian citizens, another brother is a student, a Romanian scholar, most of the other members of the Iranian family being killed because they lived on the border with Iraq. He felt attracted to Christian religion, studied the Bible, and after a while he became Christian. In the event of return, he could be killed because he changed his religion. He cannot extend his / her right of residence according to the law of aliens because he / she does not meet the conditions.

By analyzing comparatively the statements made in the course of the proceedings, the court found that the reasons invoked are not likely to lead to the granting of refugee status, as the applicant has not shown that his fear of persecution for one of the five considerations set out in the law is well founded.

From the information obtained about the country of origin, it is clear that human rights are frequently violated by the authorities, but the general situation cannot justify the granting of refugee status itself, the applicant having to invoke individual persecution.

With regard to the episode of Christianity, it was seen as not to be sincere, but merely an attempt to determine the granting of a form of protection, especially since the event took place after the rejection of the application for recognition of refugee status at the administrative stage. Furthermore, the applicant did not explain how this episode could have been brought to the attention of the authorities of the country of origin.

Addressing the case in the light of the provisions of Article 5 of the Ordinance, the court considered that the return of the applicant to the country of origin may be inhuman treatment, in the broad sense of this notion, to the fact that his whole family is in Romania (parents), and in Iran, he has no close relatives or social relationships with other people, since he has been here since he was 7 years old and for 13 years.

Article 8 of the European Convention on Human Rights, which enshrines the right of every individual to respect for private and family life, can be considered to be infringed and the interference of public authorities is permissible only in so far as it tends to protect the values expressly protected by the text.

[1] http://www.agerpres.ro/externe/2016/04/22/oim-fluxul-de-imigranti-din-turcia-spre-grecia-incepe-sa-creasca-din-nou-15-50-32.
[2] http://cursdeguvernare.ro/europa-ar-putea-institui-un-mecanism-permanent-de-relocare-a-refugiatilor.html.
[3] http://www.aktual24.ro/ciolos-ramane-ferm-declaratii-la-paris-romania-nu-accepta-impunerea-de-cote-de-refugiati/.

The applicant has a real family life in Romania and his return would violate Article 8 of the ECHR as it could be considered ad an uprooting that may create adaptation difficulties and real obstacles (see also the jurisprudence of the European Court of Human Rights Beldjoudi v. France).

As a result, the complaint was admitted and to the applicant it was granted conditional humanitarian protection under Article 5, letter (b) of the Ordinance.

The J.M.A. Case of Palestinian Nationality

History: J.M.A. is a Palestinian national, came to Romania in 1996, benefiting from a tourist visa applied to a Lebanese travel document with a validity of 5 years, the validity of which expires. He lived with his family in a camp of Palestinian refugees on the outskirts of Beirut, was involved in an incident with a Syrian soldier, lived with an aunt and came to Romania. He married here, took his wife, and returned to Lebanon in 1997 for only three months because he did not feel safe there. He returned to Romania, where he lives with his wife and two children.

It was considered that the applicant did not meet the positive criteria for recognizing refugee status, the incident, with the Syrian soldier being a singular event, taking into account the situation and status of Palestinian refugees in Lebanese camps.

Examining the case in the light of the provisions of Article 5 of the Ordinance, it may be appreciated that the applicant is part of a disadvantaged category of persons exposed to hazards that could harm his life, physical integrity or freedom. Thus, he is a Palestinian refugee, lived in a refugee camp on the outskirts of Beirut where Syrian soldiers are present as a result of the agreement between Lebanon and Syria, and they are involved in controlling Palestinian activity.

The information provided by international organizations confirms that Palestinian refugees from Lebanese camps are deprived of a number of rights, such as the right to acquire citizenship, he cannot receive permanent work permits, they are arbitrarily arrested, harassed and they are not assured, in general, optimal conditions for integration.

It can therefore be considered that the applicant is exposed to the dangers of return and, moreover, would violate the right to a family life within the meaning of Art. 8 of the ECHR, all the more so since he tried to live with his wife in Lebanon but did not feel safe and returned to Romania. (Cristuș, 2005, p. 53)

3. The Conditions for Obtaining a Form of Protection

In order to obtain one of the three forms of protection, the asylum seeker must meet the conditions mentioned above which are listed both in the explanation of the term refugee in the 1951 Convention and in the national legislation on the legal status of this category of natural persons, as well as the conditions listed in the definitions of subsidiary and temporary protection. Thus, the applicant for international protection must be in a situation that generates well-founded fear of being persecuted on the grounds of race, religion, nationality, political opinion or belonging to a particular social group. In this case, the international norms and, subsequently, by transposition, the national ones do not differentiate as to the situation where the asylum seeker belongs to a state or is a stateless person. According to them, "*in the case of persecution, everyone has the right to seek asylum and to enjoy asylum in other countries*."

However, the same protective rules contain provisions on some persons who, while fulfilling the necessary characteristics laid down in Article 1A of the 1951 Convention or the provisions of subsidiary and temporary protection, are excluded from the grant of refugee status. These people are divided into three categories:

1. *Persons already receiving protection or assistance from the United Nations*[1]*;*
2. *Persons not deemed to require international protection*[2]*;*
3. *Persons who are considered not* ***to deserve*** *international protection*[3].

The Convention briefly lists ***the situations in which an applicant may be excluded*** from granting refugee status, leaving it to the States to interpret and extend the negative conditions as provided, for example, for the second category. In this case Art. 1 E of the 1951 Convention provides that "*it shall not apply to a person considered by the competent authorities of the country in which that person has established his residence as having rights and obligations relating to the possession of those countries*". Thus, the competent authorities are allowed to analyze objectively the situation of the asylum seeker and to decide whether or not he or she needs refugee status as a form of protection. This clause only refers to the person who has "resided" in the country from which he / she requests protection, meaning his / her continuous stay and not just a simple visit. Of course, the provision in question does not affect a person who lives in another country and therefore does not enjoy the protection of the country to which asylum is sought. In addition to the respective category, the Romanian legislator comes with another case of exclusion from the international protection of an asylum seeker stipulated in art. 25[1]: "*In the process of analyzing the asylum application, the competent authorities may determine that the applicant does not need international protection in Romania, when in a part of his / her home country there are no good reasons to be exposed to acts of persecution or serious risk, or when he or she has access to the protection of such acts*." Here, for example, the recent situation in Ukraine where armed conflicts took place only in some pro-Russian regions of the country. The civilian population can be protected in its peaceful areas. However, it is often not easy for the authorities designated to study these issues to make a decision in this direction. In such situations, it will be determined whether the person requesting protection can travel safely to that part of the country and that he will not be subsequently persecuted for other reasons. For example, if a pro-Russian solicitor would be safe in that part of the country where peace is in place, but the native population supports an aggressive policy against the Russian state, then there is a risk that the applicant will be persecuted because of political opinions or a particular social group.

Another group of persons excluded from the application of the Convention but fulfilling the necessary characteristics to be granted protection are those who already benefit from protection or assistance from a United Nations body or institution other than the United Nations High Commissioner for Refugees. Examples of such protections by UNKRA are currently being replaced by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Of course, these agencies provided protection to certain individuals who were in the territories in which they were operating. Regarding refugees in Palestine, to which UNRKW refers, it will be remembered that the agency operates only in some Middle Eastern countries, thus granting protection or assistance only in those countries. In this case, the Convention excludes from the international protection persons who are protected in that area. However, the second paragraph of Art. 1 D also contains an inclusion clause, which provides for the legal protection of those refugees who do not have a regulated definite

[1] Convention of 28 July 1951 on the Status of Refugees, Art. 1D.
[2] Convention of 28 July 1951 on the Status of Refugees, Art. 1E.
[3] Convention of 28 July 1951 on the Status of Refugees, Art. 1F.

status. If we take the example of a Palestinian situation outside UNRWA's operations area, we conclude that it does not benefit from protection or assistance from any body or agency, thus ending the protection as provided for in the second paragraph of Art. 1 D and consequently the person will be entitled to benefit from the protection offered by the Convention.

The last category of people excluded from granting protection refers to those who do not deserve international protection. Article 1 F states that: "*The provisions of this Convention shall not apply to persons who have serious grounds for believing:*

a) that they have committed a crime against peace, a war crime or a crime against humanity, in the sense of international instruments designed to provide provisions on such crimes;

b) that they have committed a serious common law offense[1] *outside the receiving country before being admitted to it as refugees;*

c) That they have been guilty of acts contrary to the purposes and principles of the United Nations."

The fact that the Convention was drafted in a period relatively close to the end of the Second World War made, it rendered the memory of the trials against the great war criminals. States Parties have decided to exclude the possibility of a war criminal to receive international protection, expressing their wish not to receive in their territories and to provide asylum for such persons. The decision whether or not to apply these exclusion clauses rests entirely with the signatory State on whose territory the applicant applied for recognition of his / her refugee status. As regards the letter "a" of that article, which excludes peacekeepers, those who have committed a war crime or a crime against humanity, the Convention refers to "*the international instruments developed to provide provisions with regarding these crimes*" precisely to exclude a possible error in the process of understanding the terms of the mentioned offenses. Since the end of the Second World War, a large number of instruments referred to in the Convention have been drafted, all of which contain definitions to explain what these crimes are. The most comprehensive definitions are set out in the 1945 London Agreement and the Statute of the International Military Tribunal.

As regards the letter "b" in Article 1 F of the Convention, the Romanian legislator does not expressly use the term "crime" to define n offense. However, crime is an offense against life, having the same meaning as "murder". Thus, when transposing the norms established by the 1951 Convention, the legislative power did not also take over the term "crime", replacing it with the "offense" which, as stipulated by the Romanian criminal law, is "*the deed stipulated by the criminal law, committed at fault, unjustified and imputable to the person who committed it*."[2]

When applying the exclusion clauses, it is required to take into account the nature of the alleged offense committed by the applicant and the statutory provisions of the status to which protection is required, the conditions under which the deed was committed and the psychological attitude.[3]

[1] It is difficult to define what constitutes a "serious crime" of common law under these exclusion clauses, especially since the term "crime" has different connotations in different legal systems. In some countries the word "crime" denotes only serious crimes. In other countries, he can designate something else, from simple theft to murder. At the same time, a "serious" crime must be the murder or another offense punished by very severe law. "UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 46.

[2] Art. 15 of Criminal Code.

[3] In the process of determining refugee status, UNHCR provides in its Recommendation Manual on Procedures and Criteria for Determination that "*it is necessary to analyze the nature of the crime or alleged crimes in order to determine whether or not the applicant for refugee status is not in reality a person who escapes from justice or his criminal character, which it*

However, there cannot be excluded under Art. 1 F (b) the persons who have committed minor offenses even if, technically, the country to which they are applying for asylum qualifies them as criminal offenses in their criminal law.

The clause providing for exclusion for committing acts that are contrary to the purposes and principles (Annex 3) as they are listed in the preamble and in art. 1 and 2 of the Charter of the United Nations overlap with that of art. 1 F (a), being clear that the facts provided in this article are contrary to the purposes and principles of the United Nations. While Article 1 F (c) does not specifically introduce any new elements, it is intended to cover in general terms the acts that are against the purposes and principles of the United Nations, which could not be fully covered by the two previous exclusion clauses. Considering the paragraph (s) in relation to the two preceding clauses, it must be accepted, even if it is not expressly stated that the acts endorsed by this paragraph must also be of a criminal nature. However, there is almost no precedent on the application of this clause which, due to its very general nature, should be applied with caution.[1]

Also in the category of those who do not deserve international protection, the Romanian legislator includes those who have planned, facilitated or participated in the commission of acts of terrorism and activities that could endanger national security.

Kaya's Case against Romania

The factual situation essentially concerns the fact that, in April 2005, the applicant Saban Kaya, a Turkish citizen of Kurdish origin, established in Romania since 2000, having a Romanian wife, was declared undesirable by an order of the prosecutor in the Prosecutor's Office attached to the Bucharest Court of Appeal, while at the same time forbidding his / her right to stay on the Romanian territory for a period of 15 years, on the grounds that there was good information and evidence that he was carrying out activities that could danger the national security.

The applicant was detained by the police on 18 April 2005 and then deported to Turkey. Against the order, the applicant filed an appeal, which was dismissed as unfounded by the Bucharest Court of Appeal.

The Court found a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms which guarantees the right to respect for private and family life, as a result of the fact that the interference of the authorities was not provided for by a law corresponding to the Convention's requirements, considering that the applicant did not enjoy the minimum degree of protection against the authorities' arbitrariness, neither before the administrative authorities nor in the appeal of the Court of Appeal.

The Court also held the violation of Art. 1 of the Additional Protocol No. 7 to the Convention, which refers to procedural guarantees in the case of expulsion of foreigners, since the investigation exercised by the Court of Appeal in the judgment of the applicant's appeal was purely formal, especially since the authorities did not communicate the slightest hint of the facts imputed to him, the order by which he was declared undesirable by being communicated to him by the Prosecutor's Office only on the day

does not weigh more than a good-faith refugee"; "In assessing the nature of the alleged murder, all relevant factors must be taken into account - including any circumstances -."

[1] UNHCR the UN Refugee Agency, Manual și recomandări privind procedurile și criteriile pentru determinarea statutului de refugiat/ Manual and Recommendations on Procedures and Criteria for Determining Refugee Status, ED. UNHCR 2011, p. 48.

of the hearing, and the Appeal Court dismissed Mr Kaya's defense request regarding postponing the case, so that the accused would study the prosecutor's order.

At the same time, the Court rejected as being inadmissible the claim for violation of art. 5, par. 1 letter f), 6 & 1, 16 and 4 of Protocol no. 4 of the Convention on the right to liberty and security, the right to a fair trial, restrictions on the political activity of aliens and the prohibition of collective expulsion of foreigners.

The Lupsa Case against Romania

The European Court of Human Rights in Strasbourg ruled against Lupsa v. Romania, finding a violation of art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to respect for private and family life, as well as art. 1 of Protocol no. 7 of the Convention which deals with procedural safeguards in the case of expulsion of aliens.

The factual situation essentially concerns the fact that, in August 2003, the applicant, a Serbian - Montenegrin citizen who had settled in Romania since 1989, having a minor child, was declared undesirable by an order of the prosecutor, while at the same time enjoying the right to remain on Romanian territory for a period of 10 years, on the grounds that there was good information and evidence that he carried out activities that could endanger the national security.

The Court found that this measure was an interference with its right to respect for private and family life. As regards the legality of the expulsion and the prohibition applied, it was established that G.E.O. no. 194/2002, which constituted the basis for the expulsion of the applicant, did not give him the minimum guarantees necessary to prevent the arbitrariness of the authorities, especially since, contrary to the internal rules, the ordinance declaring it undesirable was not communicated to him and the prosecution was never triggered against the applicant.

On respecting the procedural guarantees stipulated by art. 1 of Protocol no. 7 in the case of expulsion by foreigners, the Court reiterated the arguments presented at art. 8 regarding the absence of minimal guarantees against the arbitrariness of the authorities. The claim for breach of the right to a fair trial and the right to an effective remedy were rejected as inadmissible.

The UNHCR also provides some special refugee status cases in its recommendations, even if people forced to leave their country of origin are not normally considered to be refugees under the 1951 Convention (p. 49).

a) **War refugees** whose situation has been analyzed in the section on subsidiary protection;

b) **Deserters and persons refusing military service** - obviously, a person cannot be granted refugee status if he has deserted for avoidance of embarrassment or fear of fighting. However, such a person, even if he evades military service for other reasons, may be a refugee if it can be shown that he would be punished with severe punishment in relation to the military offense committed by reason of race, religion, nationality, belonging to a particular social group or political opinion; satisfying military service would require its participation in military action contrary to its true political, religious or moral convictions or valid reasons for conscience; the refusal to perform the military service can also be based on religious beliefs, but on the condition of showing that such beliefs are real.

4. Conclusion

In this paper, after thorough research, we have been able to provide information on the principles and guarantees enjoyed by an applicant for protection as well as the forms of protection, as well as the conditions under which a person is entitled to seek protection or the cases of exclusion of an asylum seeker in general. The differences between the forms of protection have also been explained, concluding that an asylum seeker may be an emigrant, but an emigrant cannot always be a beneficiary of a form of asylum protection. So a person who voluntarily migrates without having to fear for his life because of the war or the fear of being persecuted for some reason will not receive any form of protection in this area. Consequently, the term "refugee" differs from "migrant", the former being a form of protection obtained under certain conditions, and the second includes all the persons leaving their place of origin regardless of the cause, whether forced or voluntary.

As for the forms of protection, following the analysis of international and national norms, three types were extracted, and we managed to clarify the similarities and differences between them. For example, the difference is given by the conditions of obtaining a certain form and the cases of exclusion being the same for all types of protection, which makes them similar.

Another dilemma responded to in this study was that not every asylum seeker can receive one of the existing forms of protection. Some clarifications have been made to answer who can receive protection and under what conditions. Thus, both inclusion and exclusion cases from the receipt of protection by an asylum seeker are also examined, and some examples of judicial practice are also presented.

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REALITIES AND PERSPECTIVES

Functional Regimes in the Domain of Human Rights

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Abstract: In this study we will analyze briefly the main regimes in the domain of human rights, arising from the breach of rights and guarantees by the states to its citizens, the categories of persons arising as a result of failure to fulfill obligations of governments and specifying the legal regulations by which the man can regain the needed protection; in a separate chapter we will examine the regimes of refugees and asylum seekers, which raise separate issues in the context of migration of people in the recent years in the context of Muslim people migration towards the European countries.

Keywords: human rights; race; education; children; immigrants

1. Introduction

With the advent of the first laws of societies organized in states, some unfavorable social strata were gradually recognized, and not only, by prohibiting barbaric practices such as torture, enslavement, or confiscation of property without a fair trial, citizens' rights such as the right to property, the right to be free, the right to choose their leaders, to protest and even the right to happiness originally found in Roman law and Greek antiquity, which have better explained the relationship between the individual, the religion and the secular state, elaborating the notion of a natural right in which man is the master of his destiny, and the laws are replicas of an eternal, immutable and universal right which implacably implies social relations. (Dragoman, 2008, p. 11)

Although the attempt to identify common rights and dignities of the common man has been felt over many centuries, the most important recognition has taken place through the United Nations Universal Declaration of Human Rights (DUDO), the United Nations Charter, the International Charter of Human Rights, a relatively recent recognition in relation to the hundreds of years in which bases of human rights regulation were basically outlined and established.

There is an indispensable link between a state and its citizens, which consists in ensuring, on the one hand, by the state the respect for citizens' fundamental rights and freedoms and, on the other hand, the obligation of the citizens to assume and respect their duties towards the state. This would be the perfect formula that would enable a common man to live a dignified life with a beautiful and without the concern for the next day, thus contributing to the balance and the favorable development of the society he is part of. However, there are situations in which governments are unable or unwilling to

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guarantee and secure the fundamental rights and physical security of their own citizens, in which case deprived citizens have the right, according to art. 14 of the Universal Declaration of Human Rights, seeking asylum and receiving asylum in other countries in case of persecution.

Breaking the link between the state and its citizen and depriving the latter of proper protection and the obvious consequences of such a traumatic rupture in most cases have led to the conclusion that global documents on the regulation of human rights and freedoms do not respond satisfactorily to specific problems and cannot provide sufficient protection for groups that are more vulnerable than others or have traditionally been discriminated. (Diaconu, 2010, p. 170) That is why the need to protect these vulnerable groups has led to the creation of rules that regulate separately certain aspects of human rights, thus developing specific regimes to protect the rights of these vulnerable groups.

2. Eliminating Discrimination against Women

This right is regulated separately in the *Convention on the Elimination of All Forms of Discrimination against Women* adopted by the United Nations General Assembly on 18 December 1979. The Convention defines this form of discrimination as "*any distinction, exclusion or restriction on grounds of sex, effect or purpose to compromise or to annihilate the recognition, benefit or exercise by women, irrespective of their marital status, on the basis of equality between men and women, human rights and fundamental freedoms in the fields of: political, economic, social, cultural, civil or any other areas*."

In order to implement the principles outlined in the Declaration on the Elimination of Discrimination against Women, the Convention laid down a series of rules and measures necessary to remove such discrimination in all its forms and manifestations. Thus, through the provisions of the Convention, States have committed themselves to condemn discrimination against women in all its forms, to promote by all means a policy of eliminating discrimination against women by ensuring their full development and progress in all areas of: political, economic, social and cultural, education, labor, health, economic and social life, and last but not least, in the field of marriage and family relations.

The 1979 Convention is the most important step towards promoting equality of rights and the elimination of discrimination against women, as it is not confined to the formal proclamation of equality, but it requires states through the *Committee on the Elimination of Discrimination against Women*[1] to ensure that women may in fact exercise their rights and freedoms on an equal footing. (Diaconu, 2010, p. 172) Of course, the aforementioned act was preceded by a series of other normative acts that included gender discrimination and provisions on equality before the law or equal protection of the law for any person. Among these, we can recall those who paid particular attention to the protection of women and the elimination of discrimination in society, and at the same time they were of particular importance to the issue we have been researching. An important role in the evolution of the protection of women's rights and the elimination of their discrimination has been played by the International Labor Organization since 1919, when it adopted the first conventions dealing with the protection of women in the labor market and later on equal access to employment and the right equal to maintaining themselves. However, over the years, continued to be subjected to both heavy labor and ill-treatment and discrimination of women.

[1] The 1979 Convention on the Elimination of All Forms of Discrimination against Women creates, on the basis of article 17, the Committee on the Elimination of Discrimination against Women "in order to examine the progress made by States in the implementation of its rules".

With the founding of the United Nations, through its Charter and other instruments that followed, the woman gains a new position in the society of bias and misogyny. It begins to be viewed from a different perspective, being recognized first and foremost the rights to which she was entitled to, both as a human being and as a physical person. The UN Charter, we can see, was the first step that facilitated the change of women's legal status because both in its preamble and in some of the articles it calls into question the need for collaboration between states to "keep peace in the world, to reaffirm the faith in the fundamental rights of man, in the dignity and value of the human person, in *equal rights of men and women*"[1], solving international problems of economic, social, cultural or humanitarian nature, regardless of race, sex, language or religion"[2] as well as other articles defining the legal status of women, recalling, first of all, the elimination of gender discrimination in all areas of activity. Other instruments on this line are: the Convention on the Political Rights of the Women adopted by the General Assembly on 20 December 1952, giving her the right to vote, as well as the right to hold public offices equally with men; The Committee on the Condition of Women, created by the Economic and Social Council on June 21, 1946, with the task of drafting recommendations and drafting reports on the development of women's rights in all areas, and identifying emergency issues in this area.

Despite all the provisions regarding the state of women in society and its rights, as well as the desire to proclaim gender equality, the old practices in which the main discriminator was even the woman continued over the years. Thus, in order to ensure respect for the principles of freedom and equality as well as non-discrimination, another instrument was created, which we have mentioned at the beginning of our paper on the regime regarding the elimination of discrimination against women, which not only restores the legal status of women in society, recognizing the same rights as men, but also ensures their respect, by requiring Member States to act in the best possible way in this endeavor.

Even if the European Union owns these tools to protect women as a natural person, which plays a quite important role in society, there are increasingly unanswered questions about the migration of the Muslim peoples in the European Union, namely what will be the fate of the social status of women in the next years? We know that Muslim religion does not give her the same position as a Christian religion, which is the most widespread in Europe. In fact, securing legislation and separating it from religious dogmas in Western culture has led to current achievements in this area, which has not been done equally in countries where Islamic religion is identified with the law, and all rights and freedoms are subject to the Islamic (Sharia) Law and Quran, "which can only be interpreted according to them", as set out in the 1990 Cairo Declaration of Human Rights in Articles 24 and 25.[3]

3. Eliminating Racial Discrimination in the Field of Education and Work

As we have already previously mentioned, the issue of discrimination is regulated in all human rights legislation starting with the Universal Declaration of Human Rights, where the principle of equality in dignity and rights is set forth in the first article[4], reinforced in the following articles of the document establishing that a person can use all his rights and freedoms without distinction as to race, color,

[1] Preamble, Charter of the United Nations of June 26, 1945.
[2] Article 1, par. 3, Charter of the United Nations of June 26, 1945.
[3] http://inliniedreapta.net/drepturile-universale-ale-omului-islamului/.
[4] All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must behave one towards another in the spirit of brotherhood", Article 1, Universal Declaration of Human Rights adopted by the United Nations General Assembly on September 10, 1948.

gender, religion or any other circumstance[1], are equal before the law and entitled to equal protection against all discrimination[2] and to found a family without any restriction as to nationality or religion[3], as well as other provisions that enumerate human rights without any discrimination, such as the right to education or to work.[4]

Of course, the Declaration, in our opinion, is a general guideline of human rights with a series of other specific declarations and conventions that complement it, bringing novelties in the field of human rights for the specific regulation of their rights and their protection for groups of disadvantaged people. In this context, treaties have been adopted that have established non-discrimination regimes in certain areas such as education[5] or work[6].

A broad definition of the term of racial discrimination is given by the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of 21 December 1965. The Convention defines racial discrimination as referring to any distinction, exclusion, restriction or preference based on race, color, ascendance or national or ethnic origin, which has the purpose or effect of nullifying or compromising the recognition, enjoyment or exercise, on an equal basis, of fundamental human rights and freedoms in the political, economic, cultural or any other area of public life.[7]

The Convention does not regulate only one area of discrimination of the individual, it extends its sphere of influence in all areas of social, political, cultural and economic life, offering protection, as can be inferred from the definition, not only against discrimination based on race but and on ascendance, origin or color. States, as required by the Convention, have a fundamental obligation not to resort to acts or practices of racial discrimination, not to encourage, defend or support racial discrimination by any person or organization, and finally to guarantee the right to equality before the law without distinction of race, color, national or ethnic origin in the exercise of the rights provided for in Article 5 of the Convention. States Parties also undertake to provide any person under their jurisdiction with effective protection and remedy before national courts and other competent state bodies against any racial discrimination which, in contravention of the Convention, would violate its individual fundamental rights and freedoms, as well as the right to ask for such satisfaction or fair and appropriate reparation; to take immediate and effective measures, especially in the fields of education, culture and information, to combat prejudices that lead to racial discrimination; to foster understanding, tolerance and friendship between nations and racial or ethnic groups in order to promote the purposes and principles of the United Nations Charter, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the Convention. (Diaconu, 2010, p. 176)

Other conventions prior to the *International Convention on the Elimination of All Forms of Racial Discrimination* were against discrimination in the field of education of 14 December 1960 and discrimination in the field of employment and occupation of 25 June 1958. These, compared to the International Convention on the Elimination of All Forms of Racial Discrimination since 1965,

[1] Art. 2, Ibidem.
[2] Art. 7, Ibidem.
[3] Art. 16, Ibidem.
[4] Art. 23 și 26, Ibidem.
[5] Convention against Discrimination in Education, adopted on 14 December 1960 by the General Conference of UNESCO.
[6] Convention no. 111 on Discrimination in Employment and Occupation, adopted by the Conference of the International Labor Organization on 25 June 1958.
[7] Article 1. "International Convention on the Elimination of All Forms of Racial Discrimination" adopted by the General Assembly of 21 December 1965.

focuses its attention only on the two areas resulting from the titles of conventions: education and labor. Here, the parties point out the facts considered to be discriminatory, in particular the deprivation of a person or group of people to access to any type or level of education, namely the compromising of equal opportunities or the treatment of the right to work, employment and occupation. States undertake to pursue policies to promote equality of opportunity and treatment in the field of education, as set out in the Convention against Discrimination in Education and Work, provided for in the Convention against Discrimination in Employment and Occupation. Both conventions have a limited application, and their regulations cannot be used in other spheres of non-discrimination, rather than education and labor, which led to the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, which is not limited to discrimination in some areas, but covers all spheres of public life, and in addition, it creates the Committee for the Elimination of Racial Discrimination to Oversee the Application of the Convention.

The Committee may make general suggestions and recommendations on the meaning of the various provisions of the Convention and the measures that States should adopt following their presentation of written explanations or statements, clarifying the matter.[1]

Romania's accession to the *International Convention on the Elimination of All Forms of Racial Discrimination* took place in 1970 by Decree 345, recognizing the competence of the Committee to receive and examine complaints from persons who are under the jurisdiction of the Romanian State and claim to be victims of the violation by Romania of any of the rights provided for in the Convention, much later, by Law no. 612 of November 13, 2002. This is permitted by art. 14 of the Convention, which provides that recognition of the competence of the Committee may be made by any State Party at any time. The same article limits the powers of the Committee to States which, even if they are party to the Convention, have not made a declaration recognizing the Committee's competences in this area. The Convention also provides for the creation or designation of a body which has the power to receive and examine applications from persons who consider themselves to be discriminated against in the legal order of the States which have declared the recognition of the Committee's powers. In our country, such a body was set up in 2001 by G.D. no. 1194, on the organization and functioning of the National Council for Combating Discrimination.

4. Child's Protection

Another category of people needing to protect their rights are children. All children, without any discrimination, have rights, and the Convention on the Rights of the Child adopted by the UN General Assembly of 20 November 1989 clearly mentions them. This act is a much broader version of the 1924 Geneva Declaration on the Rights of the Child, having as its basis the Declaration of the Rights of the Child of 20 November 1959. The Convention defines the child as any human being under the age of 18, cases where the law applicable to the child provides for the increase at a younger age.

Also in the 1989 Convention are the principles that guarantee the respect and protection of the rights of the child:

a) the respect and promotion of the best interest of the child;

b) equal opportunities and non-discrimination;

[1] Article 1: The "International Convention on the Elimination of All Forms of Racial Discrimination" adopted by the General Assembly of 21 December 1965, Part Two, art. 8-16.

c) responsibility of the parties for the exercise of rights and the fulfillment of parental obligations;

d) the primacy of parents' responsibility for respecting and guaranteeing the rights of the child;

e) decentralization of child protection services, multi-sector intervention and partnership between public institutions and authorized private bodies;

f) providing individualized and personalized care for each child;

g) respecting the dignity of the child;

h) listening to and considering the child's opinion, taking into account age and maturity;

i) ensuring the stability and continuity of childcare, raising and education, taking into account its ethnic, religious, cultural and linguistic origin, in case of taking a protection measure;

j) celebrated in making any decision regarding the child;

k) ensuring protection against abuse and exploitation of the child;

l) the interpretation of each legal norm referring to the rights of the child in relation to all the regulations in this field.

The same principles are listed in Law no 272/2004 on the protection and promotion of the rights of the child. By creating a proper legal framework, the child is given special treatment different from that of adults, given his physical, mental and emotional characteristics, even if the rights of the child are, in essence, human rights. (Drăghici, 2013, p. 27) The Convention on the Rights of the Child, reflected in the Romanian legislation, by Law no. 272 of 2004, largely embraces all categories of child rights that are grouped into: civil rights and freedoms, family rights and alternative care; rights relating to child welfare and education and rights relating to recreational and cultural activities. All are, generally, the rights of a human being, a separate regulation in favor of the child has been attracted by certain factors that have demonstrated over time the need for a distinct, special protection that must be given to the child as a natural person in general and as a weak link of society in particular. In this context, contemporary society must protect the child in particular by creating favorable conditions both for its psychic and physical development in harmony, and for its integration into all contexts of social life.

Of course, the field of child protection is not based only on the conventions and laws mentioned, which specifically provide for the principles and rights of the child, but also on another group of regulations, which highlight certain special cases where the need to protect the child, such as the sale of children, child prostitution and child pornography[1], the international kidnapping of children[2], the prohibition of the worst forms of child labor and immediate action to eliminate them[3], as well as the special protection of children with disabilities.[4]

A child's education first starts in the family. Parents responsible for bringing a new individual to the world have not only the duty to protect it, but also to recognize and respect their rights and to provide

[1] The Optional Protocol of 6 February 2000 to the Convention on the Rights of the Child; The 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; The 2005 Convention on the Fight against Trafficking in Human Beings.
[2] The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Romania acceded to this Convention by Law No 100/1992; Additional Protocol to the United Nations Convention against Transnational Organized Crime of 2000, on the Prevention of the Suppression and Punishment of Trafficking in Persons, Especially Women and Children.
[3] ILO Convention No 182/1999.
[4] The 2007 Convention on the Rights of Persons with Disabilities; Convention of 13 December 2006 on the Rights of Persons with Disabilities.

appropriate education, to contribute successfully to their mental, emotional, social and cultural development. In this context, through international and national normative acts, the obligations that are assigned to their parents in the complicated social process of education and protection, in their actions or inactions towards their children, are established in addition to the rights of the child.

It is essential to change the perception of the child in order to achieve results in the creation and development of a healthy and powerful generation, both mentally and physically. We, the "big" people, cannot and must not ignore the rights of the child, thus giving him the possibility of a normal growth to form a new well-trained individual on whom the society of tomorrow will be based.

5. Protection against Torture

Protection against torture is another functional regime in the field of human protection, physical person. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" of 10 December 1984 defines torture as "any act by which a severe, physical or mental pain or suffering is intentionally caused to a person in order to obtain from him or third party information or confessions, to punish him for an act committed by him or a third party or suspected of having committed, intimidating or coercing him or a third person, or for any reason based on discrimination any such offense when such pain or suffering is caused by a civil servant or other person acting in an official capacity, at his instigation or with his consent. No account is taken of pain or suffering that is inherent or derives from legal sanctions."[1]

The 1984 Convention against Torture was created by the desire to increase the effectiveness of the fight against torture and other cruel, inhuman or degrading treatment or punishment throughout the world, and the provisions of the Universal Declaration of Human Rights and the International Covenant on Human Rights on Civil and Political Rights, "which provides that no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.[2] As in other functional regimes in the field of human rights protection, the 1984 Convention against Torture regulates in detail the issue of torture by giving it a complex definition, providing all the information on torture and other inhuman or degrading treatment or punishment.

The States Parties by this Convention assumes the obligation to take legislative, administrative, judicial and other measures to prevent acts of torture in the territory under its jurisdiction. This includes cases of war or threat of war or any other exceptional circumstances that cannot in any case be invoked to justify torture. Practically, States Parties undertake primarily to ensure the protection of their citizens against torture through actions to prevent such cruel treatments, such as the introduction of criminal offenses through torture and applicable sanctions. At the same time, staff training programs in different areas of activity that may be involved in guarding, interrogating or treating any individual subject to any form of arrest, detention or imprisonment will contain knowledge and information on the prohibition of torture. Taking into account that torture is an act that causes a pain or suffering to a person, the Convention establishes that statements obtained through such acts are not to be relied upon as evidence in any proceedings, being inconclusive. The tortured person can make any kind of statements, even false ones, as a result of the caused pains, in order to escape, thus delaying or directing the trial on a wrong track.

[1] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly by Resolution 39/46 of 10 December 1984, Art. 1.
[2] Universal Declaration of Human Rights Art. 5, International Covenant on Civil and Political Rights Art. 7.

Also, torture offenses as provided for in the Convention will be included in any extradition treaties to be concluded between states or already existing ones. In the same context, extradition, rejection or expulsion will not be carried out if it is established that there are serious grounds for believing that the person concerned is at risk of being subjected to torture. In the case of States not bound by an extradition treaty, this Convention plays a very important role, creating a solid bridge of extradition in respect of these crimes. Consequently, if a State Party that subordinates the extradition of a treaty is seized with an extradition request from another State Party with which it is not bound by an extradition treaty, it will surrender the perpetrator under this Convention. Of course, the main condition for extradition under the Convention is that states are part of it. Otherwise, international legal rules that explicitly provide for the extradition procedure remain valid, the need for extradition treaties being topical.

In order to monitor and ensure the fulfillment of the commitments, the Committee against Torture[1] is set up to supervise and ensure the application of the rules established by the Convention by examining the information communicated, formulating and transmitting the conclusions together with any comments or suggestions they consider necessary in the light of the situation.

Of course, in order to act in the sense set out above, the Committee needs the States Parties to the Convention to make a declaration recognizing their competence before it can receive and examine communications in which a State Party claims that another State Party does not comply with the obligations arising from the Torture Declaration. The mandatory recognition of the Committee's ability to successfully carry out the function for which it was created is contrary to the provisions of the Convention, effectively preventing not necessarily the fulfillment of commitments made by States Parties in good faith, but ensuring that those provided for in the Convention to be respected. If the States did not recognize this quality as the Committee, the Convention would remain at the stage of a normative act with a series of obligations established by the States Parties, in which case they would be forbidden to respect them in the field of protection against torture and other cruel, inhuman or degrading treatment.

Subsequently, at the request of the World Conference on Human Rights[2], the Optional Protocol of 18 December 2002 to the Convention against Torture established a system of systematic visits to places where people are deprived of their liberty. These visits were to be carried out in order to prevent torture and punishment or inhuman or degrading treatment. The Protocol establishes within the Committee on the Prevention of Torture the Subcommittee on the Prevention of Torture and Punishment or Inhuman or Degrading Treatment. Under this Protocol States Parties allow visits to places where persons are or may be deprived of their liberty in order to ensure the protection of such persons against torture and punishment or inhuman or degrading treatment. The main point, as stated at the World Conference on Human Rights, is that for the eradication of torture, states should focus on its prevention and punishments or inhuman or degrading treatment.

6. Rights of Immigrant Workers

An important part of the world's economic relations is the international migration of the labor force, which is the movement of workers in search of a job in other states, which also provides for the change of their place of residence. The process of international labor migration includes two opposing

[1]The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part II Art. 17-24.
[2] Supplementary Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002.

phenomena, emigration and immigration, which require rigorous clarification to overlook the confusion between these two terms. Migration means the departure of a working population in one's own country whose citizens are in another country in a foreign country looking for a job while immigration is the movement and entry of the persons concerned into a country other than the one origin.

Causes of labor migration are diverse, in the recent years the economic crisis has been the main reason for triggering this process: looking for a better job, a consistent income, living standards and education, etc. The steady increase in unemployment in some countries, especially developing countries, has become an important factor in accentuating this phenomenon. The migration flows, as a rule, from developing countries to those already advanced from the financial point of view. Due to the industrial development of these states and the possibility of solving a multitude of socio-economic problems, it has led to the increase of the living, education and culture of the indigenous population. This has attracted the production and infrastructure level of the difficulty of finding workers for certain positions and specialties that are not prestigious and poorly remunerated. Thus, the population in developing countries where chronic unemployment and wage decline are predominant is willing to emigrate for jobs, sheltering the family from a material point of view.

The practice shows that labor migration can be useful for both exporting and receiving countries. For some states, the emigration of labor is a genuine source of foreign currency. It often comes in through bank transfers or when the person returns to the country. It also facilitates the improvement of the situation on the domestic labor market, thus reducing the unemployment rate and, on the other hand, increasing the level of consumption that has the effect of stimulating production. For labor-importing countries, the advantage is the decrease in production costs, with immigrant workers earning much lower wages than domestic workers, while increasing the competitiveness of national products on the international market.

Like the other social categories mentioned in this chapter, immigrant workers and their families also need protection. In search of better living conditions, they may be victims of discrimination in the field of work, health and education.

Even though the rights of migrant workers and their families are protected by general human rights documents (such as provisions relating to any person under the jurisdiction of a state or legally resident in its territory, including foreign nationals, as well as regulations based on the principle of non-discrimination or rights protected by specific documents on women's and children's rights as well as on the elimination of racial discrimination and education and labor), the complete non-compliance with the rules and the rules adopted by the States Parties in recent years has led to the need for adopting specific documents on the rights of this category of people. This implies that the international regime as well as the European Union's labor immigration regime is the result of a constant tension between the resilience of states and the need to cooperate from the moment of inability to effectively manage the phenomenon. (Burian, 2010)

In the recent years, as a result of the problems created by global economic stagnation and its consequences on migration, the dilemma between temporary and permanent workforce migration, the exodus of professionals, policies and programs have emerged to support labor migration: the International Convention for the Protection of All immigrant workers and their family members since 1990, the European Convention on the Legal Status of Immigrant Workers adopted on 24 November 1977, the International Labor Organization Convention on Migration for Employment, 1949 (C-97) and the International Labor Organization Immigrant Workers (Additional Provisions) of 1975 (C-143).

It is recognized that immigrant workers represent an increasing number of people throughout the world. This category of people are confronted with specific problems that cannot be dealt with in general conventions, such as employment, reunification of families, participation in public life, naturalization, repatriation, transfer of benefits. (Diaconu, 2010, p. 190)

The International Convention provides for the principle of equal treatment for all migrant workers and their family members, regardless of whether they are legally or illegally in the country concerned, political and civil, economic, social and cultural rights. As regards working conditions and payment, the treatment is no less favorable than that of its own nationals. Immigrant workers are granted rights in terms of working hours, additional work, weekly rest and holidays, health, minimum working age, holiday arrangements. Thus the International Convention for the Protection of the Rights of All Immigrant Workers and Members of Their Families becomes a complex tool of legal guidance for States that formulate migration policies and the complementary Conventions on ILO regarding the Migration for Employment (C-97 and C-143) offering specific standards on employment and employment of immigrant workers. The importance of these conventions is that they provide a comprehensive regulatory framework for the definition of national and international migration policies in line with the principle of the rule of law. They highlight a rights-based approach but are not simply treated in the field of human rights. They set the parameters of a broad set of national policies and regulatory concerns and outline the agenda for inter-state consultation and cooperation on the most relevant issues, including information sharing, cooperation in combating irregular migration, immigration and human trafficking, pre-departure orientation for immigrants, regular return and reintegration into home countries and others.[1]

7. Conclusion

Currently and in the past, the man was considered, the most powerful and dominant being on Earth. This achievement has become possible due to the individual's development in the scientific, economic, cultural and technological fields. All discoveries have been made as a consequence of the desire to improve and make human life easier, each inventor being firmly convinced at the time of his creation that it will only bring benefits. Unfortunately, many inventions have been used as tools for demonstrating power and supremacy. The desire to dominate and impose its ideas has led to inappropriate use of inventions against man, generating conflicts, from simple individuals to wars between states. And so in the case of conflagrations, the peaceful population is often affected by the consequences. The man, from a being who can do anything, and thinks that he is doing everything, turns into an "animal" persecuted, forced to leave his house and wealth to protect the most expensive right, *the right to life*. Thus, caught in a vicious circle, man again comes up with ideas and proposals for his protection, enumerating rights and creating laws to regulate them. However, there are cases where governments, which should actually guarantee the fundamental rights and physical security of their own citizens, are not able to do so, and civilians have to seek refuge in other states. The most surprising thing is that we protect ourselves. Laws and punishments are made for committing evil deeds by man against man.

With the democratization of the countries, it was essential to create human rights institutions, convincing us about the usefulness and importance of these mechanisms through which human rights

[1] The International Coordination Committee for the Ratification Campaign of the Convention on the Rights of Immigrants "Guide for the Ratification of the International Convention for the Protection of the Rights of All Immigrant Workers and Members of their Families", p. 5, http://www.migrantsrights.org/documents/SCRatificationGuideROJune2012_000.pdf.

are guaranteed and protected. Of course, from all the rights and protections, attention was directed more towards the regime of protection of the refugee immigrant, even for the stateless person.

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