

THE MIGRATION PHENOMENON IN THE
E.U., REFLECTED BY HUMAN RIGHTS
UNDER THE INFLUENCE OF THE COVID-19
PANDEMIC. CASE STUDY ON THE INTER-
VENTION OF THE PEOPLE'S ADVOCATE
THROUGH THE CHILDREN'S ADVOCATE
TO PROTECT THE RIGHTS OF MIGRANT
CHILDREN IN ROMANIA

Assoc. Prof. Mădălina BOTINĂ, PhD

*Ovidius University of Constanța,
Faculty of Law and Administrative Scienc
maadalinabotina@yahoo.com*

Abstract:

This paper presents the evidence and experience that underpin the legislative initiatives proposed for migration and asylum. It points to the key challenges in relation to migration faced by the European Union.

Since the migration crisis of 2015, the number of arrivals and composition of flows have changed significantly, both between and along the different migratory routes. Additionally, there is significant variation of migratory pressure across countries and in terms of the tools applied to address it.

Romania is exposed to migration routes in the present and we identified a number of challenges that prevent the EU's current system from being fit to address the realities of migration, able to ensure international protection for those in need and effective and humane return of irregular migrants, fair in terms of solidarity and sharing of responsibility between Member States as well as ready for use in times of crisis and situations of force majeure.

This article provides an overview of the legislative and non-legislative proposals that seek to address the gaps and inefficiencies identified.

Keywords: *asylum, migration, human rights, COVID-19 restrictions, People's Advocate.*

Introduction

Romania is exposed to migration routes (legal and illegal) from Eastern European countries, originating in the states of the Middle East, South-east Asia or Africa. Although in some EU Member States there have been migration trends from Central and South American states, they have not yet been reported in Romania, due to the geographical position and low attractiveness for citizens from these states.

Romania's accession to the EU has determined, in recent years, substantial changes in the legal norms governing the regime of foreigners in Romania, the citizens of the Member States of the European Union and the European Economic Area, as well as the legal norms governing asylum in Romania, ensuring compliance with European legislation in the field and with other international legal instruments to which the Romanian state is a party.¹

„International law on human rights establishes unequivocally that migrants and members of their families are first and foremost human beings, the holders of universal human rights whose dignity and security require specific protection. Consequently, they enjoy the protection of international human rights law like anyone else, even if they are in an irregular situation as can be the case with migrants.”²

The foreigner has by definition the citizenship of another state, the stateless person is stateless, and the refugee may be in one of both situations. Migrants on the territory of a state do not enjoy the same rights and obligations as the citizens of that state, but there is a minimum standard of protection, of customary origin, which obliges that state to protect all persons, including migrants, who are on its territory (obligation to protect against ill-treatment).³

„More than a year and a half after the start of the pandemic, a body of data and analysis points to how COVID-19 restrictions in European

1 Dragoș Chilea, Cristina M. Kassai, “Investor immigration in the USA: the eb-5 business immigration law”, in *Curentul Juridic*, nr. 1/2015, pp.46-60, (EBSCO), www.revcurentjur.ro.

2 ***Inter-Parliamentary Union, the International Labour Organization, and the United Nations (Office of the High Commissioner for Human Rights). Handbook for Parliamentarians no 24, *Migration, human rights and governance*, 2015.

3 Dragoș Chilea, *Drept internațional public*, București, Editura Hamangiu, 2007, pp. 64-65.

countries affected migrants and asylum-seekers. Border controls, travel restrictions, and other efforts to stem the spread of the virus initially significantly reduced migration to Europe. In 2020, „the EU as a whole registered a 33% year-on-year decrease in asylum applications,” the European Commission reported at the start of 2021.⁴

Meanwhile, irregular border crossings dropped to rates not seen since 2013, the commission continued. This also included some troubling developments for human rights. Many asylum offices and consulates closed, while some ports were declared unsafe. Asylum-seekers were unable to lodge claims in some cases. Limits on the freedom of movement at times trapped asylum-seekers in unsanitary conditions, for example on Lesbos; or they were quarantined offshore at arrival countries.”⁵

Romania is entitled to implement a specific immigration policy, depending on the needs identified at national level, and at the same time concerted, taking into account the impact it may have on other EU Member States, while ensuring fair treatment of immigrants and their harmonious integration into the host society.

Romania is exposed to migration routes (legal and illegal) from Eastern European countries, originating in the states of the Middle East, Southeast Asia or Africa. Although in some EU Member States there have been migration trends from Central and South American states, they have not yet been reported in Romania, due to the geographical position and low attractiveness for citizens from these states.

Romania's accession to the EU has determined, in recent years, substantial changes in the legal norms governing the regime of foreigners in Romania, the citizens of the Member States of the European Union and the European Economic Area, as well as the legal norms governing asylum in Romania, ensuring compliance with European legislation in the field and with other international legal instruments to which the Romanian state is a party⁶.

4 Official site of European Commission https://ec.europa.eu/info/index_en - *Migration statistics update: the impact of Covid-19*, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_232

5 Official site of Deutsche Welle, *Is Europe ready for a post-Covid migration wave?*, 09.10.2021, <https://www.dw.com/en/is-europe-ready-for-a-post-covid-migration-wave/a-59425211>

6 Ioan-Gheorghe Rotaru, *Om-Demmitate-Libertate*, Cluj-Napoca, Editura Risoprint,

In terms of reception conditions, efforts by EU + countries in 2019 focused on adjusting the capacity of units and improving the quality of reception conditions for minors and vulnerable applicants, improving specialized reception units and training staff managing vulnerable applicants, especially unaccompanied minors. However, civil society organizations have expressed concern about the poor reception conditions for vulnerable people in a number of countries. In addition, the taking into custody of vulnerable applicants, especially children, has continued to raise fundamental questions in many EU + countries, becoming the subject of several decisions in the European and national judicial system.

The EU Asylum Acquis contains provisions on identification and providing support to applicants who need procedural guarantees special. In general, efficient and rapid identification of vulnerable applicants it remains a challenge, especially with regard to vulnerabilities that do not are visible, such as the psychological consequences of torture or trauma.⁷

By Romania's acquisition of the status of a member country of the European Union, the acute need for a new regulation was felt, which would correspond to the current requirements in the matter.

Among the vulnerable applicants, one of the key groups represents it unaccompanied minors seeking protection without being in the care of a responsible adult.

In 2019, approximately 17,700 applications were submitted in EU countries international protection for unaccompanied minors, representing a decrease of 13% compared to 2018. Requests from unaccompanied minors have represented 2% of the total number of applications (that is 354 requests).

As in previous years, in 2019 numerous initiatives were launched for improving the situation of vulnerable applicants. Some countries have introduced measures early identification and provision of procedural guarantees. They also have steps have been taken to improve or adjust the methodologies of age assessment, while civil society organizations and organizations continued to monitor gaps and deficiencies process. Legis-

2019, pp. 201-215; Idem, *Drept bisericesc*, Cluj-Napoca, Editura Risoprint, 2014, pp. 210, 253-264.

7 Dragoș Chilea, "L'immigration comme phenomene majeur de l'évolution de l'integration europeenne", in *Curentul Juridic*, nr. 4/2013, pp. 48-58, (EBSCO), www.revcurentjur.ro.

lative and policy changes have been introduced for legal representation, to expedite the appointment of guardians and to improve the overall quality of the guardianship system.⁸

In 2019, numerous initiatives were launched for improving the situation of vulnerable applicants. Some countries have introduced measures early identification and provision of procedural guarantees. They also have steps have been taken to improve or adjust the methodologies of age assessment, while civil society organizations and organizations continued to monitor gaps and deficiencies process. Legislative and policy changes have been introduced for legal representation, to expedite the appointment of guardians and to improve the overall quality of the guardianship system.

At the same time, there is compelling evidence of how the pandemic has exacerbated existing challenges in our societies.⁹ Sections of our populations have exploited COVID-19 to attack minorities already subject to appalling levels of discrimination and hate crime.

„Problems concerning asylum registration and application procedures and dangerous health conditions in detention remained prevalent in some Member States in June 2020. In addition, several Member States continued to report that refugee children could not access distance learning due to a lack of available equipment or WIFI. In a more promising development, most Member States that had imposed temporary restrictions on the processing of asylum applications since March 2020 had gradually resumed normal asylum procedures by June 2020.”¹⁰

In this respect, the states has to strengthen the response to and collaboration on covid-19 through the global compact on safe, orderly and regular migration and the sustainable development goals. All the countries should cooperate, in the light of the serious challenges facing migrants, as a result of the COVID-19 pandemic. A framework has to be created

8 Dragoş Chilea, *Culegere de probleme din domeniul dreptului internațional public*, Târgu-Mureş, University Press Târgu-Mureş, 2019, pp. 97-110.

9 Ioan-Gheorghe Rotaru, “Spiritual Lessons observed through the Coronavirus Crisis”, *Dialogo. Issue of Modern Man*, vol.6, nr.2/2020, Publisher: EDIS - Publishing Institution of the University of Zilina. Powered by: RCDST (Research Center on the Dialogue between Science & Theology), Ovidius University of Constanta. Romania, pp. 71-82.

10 *** European Union Agency for Fundamental Rights, *CORONAVIRUS PANDEMIC IN THE EU – FUNDAMENTAL RIGHTS IMPLICATIONS*, *Bulletin no.4/2021*

for inclusive pandemic preparedness, prevention, response and recovery measures that protected migrants' rights and leveraged their positive contributions to sustainable development; such measures could and were being used by governments around the world. As the representative of the European Union observed, working together, for example under the new EU Pact on Migration and Asylum, was the best way to save lives, fight criminal networks taking advantage of the situation and promote good migration management.¹¹

The refugee problem is one of the serious problems facing the contemporary world, their legal status still remaining precarious. The highest international forum dealing with the situation of refugees is the United Nations High Commissioner for Refugees (UNHCR), established on 14 December 1950 and operational since 1 January 1951.¹²

The Romanian Constituent Assembly has chosen the name "the People's Advocate", an ombudsman institution with general jurisdiction, which has as purpose the defense of individuals' rights and freedoms in their relationship with the public authorities.

The representative of the United Nations High Commissioner for Refugees (UNHCR) in Romania referred the People's Advocate pointing out that in recent months, the UNHCR has received several notifications that several children between the ages of and older have remained in the Regional Center for Accommodation and Procedures for Asylum Seekers Bucharest, administered by the General Inspectorate for Immigration.

These children would be accommodated with adults, the legal representatives are appointed late for them, and the situation regarding the accommodation is determined by the lack of places at the Pilot Protection Center for Child Victims of Trafficking in Human Beings, "Gavroche" Sector 2, Bucharest, the only unit designated for the accommodation of unaccompanied minors seeking asylum. In this regard, the People's Advocate ordered an investigation.

♦ the situation of the minors present at CRCPSA Bucharest:

11 ***International Organization for Migration, *COVID-19 CRISIS: migration reimagining the role management of migrants and advances human mobility for the understanding achievement of migration the sustainable issues encourages development social and economic goals*, No 30 International Dialogue on Migration, 202.

12 Ioan Chelaru, Ana Luisa Chelaru, *Străinii în România Regim juridic*, București, Editura Universul Juridic, 2016, p. 105.

At the time of the investigation, CRCPSA Bucharest housed both accompanied and unaccompanied minors, with different statutes, as follows: a number of 29 minors seeking asylum, 9 minors with refugee status and 2 minors who were granted subsidiary protection.

As for unaccompanied minors, there are 15 of them, as follows: 14 asylum seekers and 1 with subsidiary protection. Of these, 4 are under the age of one.

For all 15 unaccompanied minors, the General Directorate of Social Assistance and Child Protection was requested to appoint a legal representative and take over in a residential center for those under the age of one, but at the time of the survey, only 9 minors they had a legal representative, while for 6 of them, DGASPC Sector 2 had not yet responded to the requests made.

♦ accommodation conditions:

It is confirmed that unaccompanied minors are accommodated in the same room as adults (only in room no. 414 only minors were accommodated).

♦ the documents drawn up regarding these minors:

- asylum application, completed by the applicant;
- information forms regarding the rights and obligations;
- information on the „Dublin Procedure“;
- preliminary interview;
- background interview;
- Decision to grant / reject refugee status or subsidiary protection;

Conclusions:

The Regional Center for Accommodation and Procedures for Asylum Seekers Bucharest has applied for the appointment of a legal representative for all unaccompanied minors, as well as for taking over in a residential service for unaccompanied minors, up to one year of age, but also for one of the minors over the age of expressed agreement in this regard;

The Recommendation of the People's Advocate:

The director of the Regional Center for Accommodation and Procedures for Asylum Seekers Bucharest, is to, in the exercise of the attributions provided by the legislation in force, to order the legal measures for:

a) accommodation of unaccompanied minors separately from adults;
 b) starting the specific renovation works of the center, in order to improve the accommodation conditions.¹³

Bibliography:

- * Chelaru, Ioan; Chelaru, Ana Luisa, *Străinii în România. Regim juridic*, București, Editura Universul Juridic, 2016.
- * Chilea, Dragoș; Kassai, Cristina M., “Investor immigration in the USA: the eb-5 business immigration law”, in *Curentul Juridic*, nr. 1/2015, pp.46-60, (EBSCO), www.revcurentjur.ro.
- * Chilea, Dragoș, *Drept international public*, București, Editura Hamangiu, 2007.
- * Chilea, Dragoș, “L’immigration comme phenomene majeur de l’évolution de l’integration europeenne”, in *Curentul Juridic*, nr. 4/2013, pp. 48-58, (EBSCO), www.revcurentjur.ro.
- * Chilea, Dragoș, *Culegere de probleme din domeniul dreptului internațional public*, Târgu-Mureș, Editura University Press Târgu-Mureș, 2019.
- * Rotaru, Ioan-Gheorghe, *Om-Demnitare-Libertate*, Cluj-Napoca, Editura Risoprint, 2019.
- * Rotaru, Ioan-Gheorghe, *Drept bisericesc*, Editura Risoprint, Cluj-Napoca, 2014.
- * Rotaru, Ioan-Gheorghe, “Spiritual Lessons observed through the Coronavirus Crisis”, *Dialogo. Issue of Modern Man*, vol.6, nr.2/2020, Publisher: EDIS - Publishing Institution of the University of Zilina. Powered by: RCDST (Research Center on the Dialogue between Science & Theology), Ovidius University of Constanta. Romania, pp. 71-82.
- * Official site of European Commission https://ec.europa.eu/info/index_en - *Migration statistics update: the impact of Covid-19*, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_232
- * Official site of Deutsche Welle, *Is Europe ready for a post-Covid migration wave?*, 09.10.2021, <https://www.dw.com/en/is-europe-ready-for-a-post-covid-migration-wave/a-59425211>
- * * * * Inter-Parliamentary Union, the International, Labour Organization, and the United Nations (Office of the High Commissioner for Human

13 The People’s Advocate - <https://avp.ro/?lang=ro-ro>

Rights). Handbook for Parliamentarians no 24, *Migration, human rights and governance*, 2015.

- ✦ * * * European Union Agency for Fundamental Rights, *CORONAVIRUS PANDEMIC IN THE EU – FUNDAMENTAL RIGHTS IMPLICATIONS*, *Bulletin no.4/2021*
- ✦ * * * International Organization for Migration, *COVID-19 CRISIS: migration reimagining the role management of migrants and advances human mobility for the understanding achievement of migration the sustainable issues encourages development social and economic goals*, No 30 *International Dialogue on Migration*, 202.
- ✦ The People's Advocate - <https://avp.ro/?lang=ro-ro>