



MIGRATION AND LAW

ROMANIAN INSTITUTE FOR HUMAN RIGHTS

Motto: „It is not because things are difficult that we do not dare;
it is because we do not dare that they are difficult. ”

SENECA

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LIST OF ABBREVIATIONS

ANUROM	Romanian Association for the United Nations
EEA	European Economic Area
EC	European Commission
EU	European Union
EURODAC	European Dactyloscopy
FRA	European Union Agency for Fundamental Rights
GII	General Inspectorate for Immigration
IDEF	International Institute of Law of French Expression and Inspiration
IOM	International Organization for Migration
IRDO	Romanian Institute for Human Rights
No.	Number
OHCHR	Office of the High Commissioner for Human Rights
RAAPPS	Autonomous Department for the Administration of the State Protocol Patrimony
RVA	Response to Vulnerability in Asylum
UK	United Kingdom
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
USA	United States of America

FOREWORD

Publishing this study, the Romanian Institute for Human Rights focuses again upon a topic that its researchers have been interested in for a long time – a topic that seems to be always hot under such circumstances that the present time, beside the armed conflicts and the well-known tensions, is also characterized by the migration of large masses of people from one country to another.

The importance of the topic is also proved by the fact that it is included in the multiannual agenda 2013-2017 of the European Union Agency for Fundamental Rights, a member of whose Management Board the author of this volume is.

As the study points out, Romania's adherence to the European Union entailed in the last years substantial changes in the legal norms regulating the status of foreigners in Romania in their capacity as citizens of Member States of the European Union and the European Economic Area, as well as the legal norms regulating asylum in Romania, in an effort to achieve compliance with the European legislation and other legal instruments where Romania is a party.

The study deals with various aspects related to the types of visas and the conditions that have to be met for obtaining them, the right to family life and re-integration of the family, the asylum procedure and the subsidiary protection provided for vulnerable categories of persons, as well as the status of foreign students and the diplomatic personnel according to the international standards.

A particularly important issue that is dealt with is the traffic of human beings. A particularly important issue that is dealt with is the traffic of human beings. The author, who was the Romanian National Rapporteur to the 19th International Congress of Comparative Law of Viena and also coordinated PhD theses and postdoctoral research on the topic, analyzes the changes that were introduced in the legislation and the inter-institutional cooperation for fighting this phenomenon.

As far as the economic migration is concerned, it is pointed out that the mobility of the labour within the EU area has already become a mass phenomenon affecting all aspects of the Romanian society, including immigration. Thus, migration in search for jobs is a circular phenomenon, while this type of mobility, motivated economically, to and from Romania is illustrated both by the masses of migrants who leave the country and the masses of immigrants entering the territory of Romania.

Valeriu Andrei Rendec
Deputy Director,
Romanian Institute for Human Rights

INTRODUCTION

This volume is devoted to one of the most dramatic phenomena of contemporary world. Every epoch and every social order knew certain phenomena that would disturb the social settlements, and prevent or delay a linear development. Migration is a phenomenon generated by wars, natural catastrophes, radical climate changes, or economic, social and cultural reasons. At the same time, it reflects the dysfunctions and the malfunctions of modern societies¹.

As can be easily deduced, migration is not only a dramatic phenomenon but also a complex one, involving a large number of terms, actions, protection measures, etc. This is the reason why certain terminological clarifications would be necessary in order to avoid certain confusions that might occur in the minds of those who are less familiarized with this particular field.

There are three terms that most particularly should be clarified: migrant, asylum seeker, and refugee.

Generally speaking, *migrants* are people who move from the country where they live or whose nationals they are to another country. The motivation for such radical decision may be economic, educational, political, etc. They could leave their country to escape persecutions, abuses against their fundamental rights or as a result of threatening against their lives or physical integrity generated by a conflict/war situation. Some of them would seek asylum.

¹ See **Victor Dan Zlătescu, Irina Moroianu Zlătescu**, *Refugiații și statutul lor juridic*, Editura IRDO, București, 1992, p.3 et seq.

Terminologically, the word *asylum* is Latin (*asylum*) coming from the Greek word *asilon* derived from a form of the adjective *asylos* (inviolable). *Asylos*, in its turn, comes from two words: *a* (no) and *syle* (to catch/to arrest). This induces the idea that “asylum” means “not to be caught” or “not to be arrested”, which involves “protection against persecution”, “escape place”, “shelter”, “refuge”.² According to the doctrine, the notion of “asylum” would rather include certain places, areas or territories, where a person cannot be arrested as a result of the fact that the respective area is protected by a national force.³

The Geneva Convention of 1951 defines in its Article 1 paragraph 2 the term *refugee* as follows: *As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

In terms of the legislation of the European Union, the fundamental document dealing with such issues is Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need

² Etymologies taken from *Noul dicționar universal al limbii române*, Litera Internațional, Ediția a Treia, 2008, p.146.

³ See **Adrian Bulgaru**, *Standarde și măsuri la nivel național și european privind protecția internațională în materia azilului*, Pro Universitaria, București, 2013, p. 25. See also **Gheorghe Iancu**, *Dreptul de azil privire comparativă cu statutul refugiatului*, Editura Universitaria, 2002, p. 22 et seq.

international protection and the content of the protection granted.

A couple of years ago, more than 20 million non-EU nationals were living in the European Union, that is, approximately 4% of the Union's entire population. In average, 250,000-300,000 people apply for asylum in the EU every year.

Under the circumstances, it is no wonder that the European Union Agency for Fundamental Rights (FRA), established in 2007, included in its Charter of the Fundamental Rights the right to asylum as one of the fundamental rights. It also explains why on 28 February 2008, the Justice and Home Affairs Council of the European Union, on proposal of the European Commission after consulting the European Parliament, adopted the Agency's Multi-annual Framework 2007-2012 where, one of the main areas for the Agency's work, entered under letter (e), is "asylum, immigration and integration of migrants". The Multi-annual Framework 2013-2017, adopted on 11 March 2013, also includes "immigration and integration of migrants, visa and border control and asylum" as a main area for the Agency's work. As a matter of fact, the Fundamental Rights Conference 2014 focuses on migration.

Romania has a specific immigration policy based on needs identified at national level while taking into account the impact this may have on other EU Member States; this policy aims to ensure fair treatment and harmonious integration of foreigners in the Romanian society.

Romania is a route of migration (legal and illegal) for people from the states of Eastern Europe, from Middle East countries, from South East Asia or from Africa. Although in some Member States there were trends of migration from countries in Central America and South America, such cases have not yet been reported in Romania. In recent years,

although Romania has kept largely its character of a State of transit, it has also become a state of destination.

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

Another category of migrants is that of asylum seekers and those who have obtained a form of protection in Romania. Thus, free access to the asylum procedure was provided in 2009 to a number of 835 foreigners and this trend has maintained a high level, while there was no case of return recorded. This trend is directly influenced by the economic situation of Romania and the implementation of European rules which provide that the State in which the asylum seeker enters or seeks protection for the first time is responsible for processing the application.⁴

The existing legal framework

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

⁴ See **Gheorghe Iancu**, *Proceduri constitutionale. Drept procesual constitutional*. Universitaria, București, 2010, p. 124. See also **Cristian Ionescu**, *Tratat de drept constituțional contemporan*, Editura All Beck, București, 2003.

Urgency Ordinance No. 56/2007 on employment of foreigners in Romania, approved with amendments by Law no. 134/2008.

Of course, legislation is being continuously developed and modified. In this respect, both the Executive and the Legislative are preoccupied to make the Romanian legislation regulating entrance on the Romanian territory and asylum comply with the European legislation in the field, such as Regulations 2006/562/EC⁵, 2009/81/EC⁶ and 2013/610/EC⁷

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

This process of regulatory harmonization is in progress to identify viable solutions for transposing and harmonizing the national law with the EU law in the field. However, by amending the national legislation within the areas mentioned above, the legislators seek permanent elimination of failures occurring in the implementation of the legislative framework regarding the regime of foreigners on the territory of Romania.⁸

Also Romania applies the provisions of Regulation CE No. 343/2003 on establishing the criteria and mechanisms for determining the member state responsible for the examination of an asylum application presented in one of the member states

⁵ Published in the Official Journal of the European Union No L102/1 of 11 April 2006.

⁶ Published in the Official Journal of the European Union No L35/56 of 4 February 2009.

⁷ Published in the Official Journal of the European Union No L182/1 of 29 June 2013.

⁸ See **Adrian Bulgaru**, *op. cit.*, p. 25.

by an applicant of a third country as well as Regulation CE No. 2725 of 11 December 2000 regarding the establishment of the EURODAC system to compare digital fingerprints with the aim to efficiently implement the Dublin Convention.

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

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

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

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

The national law mainly transposes the following EU Directives:

– Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences⁹;

⁹ Published in the Official Journal of the European Union No L212 of 7 August 2001.

– Council Directive 2003/9/EC of 27 January 2003 laying out minimal standards for the asylum seekers in the member states¹⁰;

– Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹¹;

– Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status¹².

The management of the migration phenomenon is based on the participation of all national institutions with competence in this area, through participatory management and institutional cooperation while the national coordinating role is played by the Ministry of Interior through its General Inspectorate of Immigration.¹³ Since the date Romania fully implemented the provisions of the Schengen acquis, there have been two kinds of visas issued: uniform visas (valid for the Schengen area) and national visas (valid in Romania).

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

¹⁰ Published in the Official Journal of the European Union No. L31 of 6 February 2003.

¹¹ Published in the Official Journal of the European Union No. L304 of 30 September 2004.

¹² Published in the Official Journal of the European Union No. L326 of 13 December 2005.

taking into account the provisions of the Schengen acquis concerning the possibility that holders of a residence permit issued by one of the Schengen States can move freely on the territory of other Schengen states under this permit and with a valid travel document, for up to three months within 6 months, it is most likely that the number of applications for the issuance of national visas will increase.

In Romania, the General Inspectorate for Immigration is the competent coordinating authority in matters of migration and residence and is working with all other national institutions competent in the field.¹⁴ The General Inspectorate for Immigration exercises the powers given to it by law for implementing Romania's migration, asylum, integration of foreigners and relevant legislation in these areas. The activity of the General Inspectorate for Immigration (GII) is a public service and is conducted in the interest of the community and in support of state institutions, and based solely on law enforcement. GII is an institution for managing issues of migration, asylum and social integration of foreigners in Romania.

In terms of organizational structure, the Inspectorate has structures at central and regional levels. The central level consists of directions, services, and other functional structures; at local and regional level, through its county centers, it develops accommodation procedures for asylum seekers, and administrates detention centers for foreigners in detention.

¹³ See **Irina Zlătescu**, *Constitutional law in Romania*, Boston, Kluwer Law International, 2013, p. 23 et seq..

¹⁴ See **Adrian Bulgaru**, *Standarde și măsuri la nivel național...op.cit.*, p. 77.

I MIGRATION AND RESIDENCE¹⁵

European Union / European Economic Area Citizens

Admission

Citizens from EU and European Economic Area (EEA) or those from the Swiss Confederation can enter the country through any border crossing point if they have valid national identity document, passport or other document certifying their identity, provided this document is recognized by the Romanian state.

Citizens from EU and EEA or from the Swiss Confederation may enter and remain in Romania according to the right of free movement and residence provided by the Romanian state law in line with the EU provisions. If the stay in Romania extends for more than three months, the foreign citizens must register as residents (get a registration certificate) at the territorial units of the Inspectorate General for Immigration.

Any citizen from a non-EU country or outside the European Economic Area or not being from the Swiss Confederation, who is on the territory of Romania, can get a visa from any border crossing checkpoint if he/she is holder of a passport and

¹⁵ Some basic ideas of this study have been dealt with in the National Romanian Report to the Congress of the International Academy of Comparative Law, Vienna 2014. Beside the author of this volume the team elaborating the Report also included Daniela Albu, Valeriu Rendec, Adrian Bulgaru, Marius Mocanu, Petru Emanuel Zlătescu, Mihaela Scarlat.

a valid entry visa, which is necessary if the person comes from a state for which an entry visa is required to enter Romania.

Entry visas are granted, upon request, by the diplomatic missions and the consular offices of Romania, with prior approval by the National Visa Center of the Ministry of Foreign Affairs within 48 hours and without payment of consular fees.

Citizens from an EU state, from the European Economic Area or from the Swiss Confederation wishing to stay in Romania longer than three months have to register their residence to the territorial units of the Inspectorate General for Immigration.

1. Short Stay (tourism, family visits)

Romanian Visa for Short Stay

Citizens of third countries which are not on the list of third countries can apply for visas on the basis of an invitation endorsed by the Ministry of Administration and Interior – General Inspectorate for Immigration

A. Airport and harbor transit visa type A is granted in accordance with the provision of Article 3 of the Community Code on Visas

The transit visa is valid for international transit on one or more airports of EU countries. The applicant should have travel documents and should declare the final destination after the transit. The applicant should provide information that enables the evaluation of his or her intentions not to enter a territory of a member state. In accordance with art. 3 and 5 of the Community Code on Visas the following categories are

exonerated from the obligation to have a transit airport or harbor visa:

- holders of a valid visa, or a long stay national visa or a permit of stay issued by a member state;
- nationals of third countries who are holders of a visa valid for a member state or for a state which is party of the Agreement of 2 May 1992 regarding the European Economic Area, for nationals of Canada, Japan or USA or in cases when these citizens are coming back from the respective countries after they made use of the visa;
- family members of EU citizens;
- holders of diplomatic passports;
- flight crew members who are nationals of a country which is a Contracting Party to the Chicago Convention on International Civil Aviation.

B. Transit visa type B is granted to

Foreigners transiting the Romanian territory and can be issued for one, two or more transits but the duration of transit should not exceed 5 days. To obtain this visa there are necessary: visa for the state of destination and traveling tickets. In case the travel is by car the driving license and the car registration documents are necessary as well as the green card.

C. Short stay visa type C is granted as:

– **CM visas for missions** of nationals of third countries (and their family members) who travel to Romania for political, administrative or public utility reasons within international organizations or public administration institution of their country of origin;

– **C/TU visas for tourism** – for citizens of third countries who wish to travel to Romania for touristic purposes;

– **C/VV visas for visits** –for citizens of third countries who come to Romania to visit Romanians or Foreigners who are holders of a stay permit on the territory of Romania;

– **C/TR visas for transport** – a short stay visa granted to citizens of third countries which are traveling to Romania for short periods of time for professional activities related to transport of goods or persons;

– **C/SP visas for sports activities** –granted for citizens of third countries who are traveling to Romania in order to participate in sportive competitions;

– **C/ZA visas for cultural, scientific, humanitarian purposes, short term medical treatments** – visa granted after justification of reason for traveling.

Exceptions for short stay visas:

There are certain situations when the invitation endorsed by the General Inspectorate for Immigration is no longer necessary, when visa is requested from the diplomatic or consular offices in the respective country by presenting an invitation to Romania legally certified by a notary.

Usually for granting a short stay visa, the Ministry of Foreign Affairs requests the endorsement of the General Inspectorate for Immigration (this is an internal procedure) and thus the term for granting the visa can be prolonged. The General Inspectorate for Immigration issues the endorsement for short stay within 7 working days from the date of the request and in case of other situations that request more justifications from the applicant within another 7 working days.

2. Long stay visa

For long-stay visa for commercial activities the following documents are necessary documents:

- the opinion of the Romanian Center for Trade and Investment (valid 6 months from date of issue);
- criminal record certificate or other document with the same legal value;
- medical insurance valid throughout the period;
- proof of accommodation.

All these documents shall be submitted to the diplomatic missions or consular offices of Romania on the territory of the respective country.

As internal procedure, long stay visa National Visa Center receives approval only after obtaining the opinion of the General Inspectorate for Immigration which delivers its opinion within 30 days of receiving the request, with the possibility to extend the deadline by 15 days. Long stay visa is granted for a period of 90 days.

After entering Romania a residence permit is obtained. This proves the right to stay in Romania and can be obtained from the local branch of the Inspectorate General for Immigration in the county where the applicant lives.

3. Right to Family Life

The Law No. 122/2006 on asylum emphasizes the importance of respecting family unity, sets the priority of the interests of the child and provides safeguards for unaccompanied minors seeking for protection. This law is an example of harmonization of the national legislation with the text of the 1951 UN Convention.

An unaccompanied minor asylum seeker will be considered – whether he or she expressed this option – and the process of granting asylum will be suspended until the appointment of a legal representative. The law provides that the authority for child protection initiates the appointment of a legal representative for the minor.

According to Article 72 paragraph 2 of Law No. 122/2006 Romanian authorities have the obligation to support family reunification for unaccompanied minors. Para 3 of the same article points out that in case of finding of the minor's family, a reasoned decision to reunite the family will be issued. The minor applicant will be interviewed only in the presence of his or her legal representatives. Children with special needs applicants will be interviewed by experts and specialists officers. The deadline for settling asylum application is 30 days. But this period is suspended until the appointment of the legal representative for the applicant unaccompanied minor.

Article 7 of Law No. 122/2006 guarantees the principle of family unity for the spouse, unmarried minor children, for the dependent applicant, whether the minor is originating in marriage or outside the marriage, or in case the minor was adopted according to the national legislation in the country of origin.

To regulate the family unification procedure for beneficiaries of a form of protection in case of family members that are outside Romania, it was abrogated the Ministry of Interior Order No 213 of February 2002 that was establishing a common procedure for the settlement of claims for refugee status for family members of the person whom has been granted refugee status in Romania.

The Romanian government is granting refugee status to the spouse of the applicant if the marriage was contracted before entering the territory in which protection is granted.

Family reunification

Beneficiaries of protection (refugee status or subsidiary protection) may apply for asylum in the names of family members (spouse or, where appropriate, the wife and minor

children) in the home country or a third country. This is the only exception provided by the law when there is no obligation that the spouse or the minors should personally submit the request for asylum.

According to the asylum law the family members of a beneficiary of refugee or subsidiary protection are the following:

(i) the spouse or, where appropriate, the wife of the beneficiary of refugee or subsidiary protection;

(ii) the minor children of the beneficiary of refugee or subsidiary protection dependents, provided they are unmarried, whether in or outside the marriage or adopted by national legislation of the country of origin.

1) In case the conditions for family reunification are met – if the decision making officer endorses that the proof of kinship was made, the Foreign Ministry will request the issue of a visa and travel for those mentioned above as family members of the beneficiary of refugee status.

2) In case the conditions for family reunification are not met – if the conditions are not met for family reunification the officer who issued a rejecting decision will communicate it to the beneficiary of a form of protection.

The foreigner may exercise two appeals against this decision of rejection, on the same terms provided by law for the ordinary procedure.

Recent statistics

According to the latest statistics provided by the UNHCR office in Romania around 2511 people sought asylum in Romania in 2012. 43 of these were unaccompanied minors, or children separated from their families. In 2012, 161 men,

women and children were recognized as refugees and a total of 117 people were given a complementary type of protection. The most common countries of origin for immigrants in Romania are: Republic of Moldova, Algeria, Morocco, Pakistan, Syria and Afghanistan.¹⁶

4. Stays by privileged categories that derived specific rights from international accords

The concept of EU Blue Card, inspired by the American Green Card,¹⁷ was implemented starting with 1 August 2011 by Law No. 157/2011 which amends and complements a series of normative acts regarding the regime of foreigners in Romania. Therefore, effectively 1 August 2011 the Romanian employers can request labor authorizations for highly qualified foreign workers. The law enables citizens of third countries to receive the EU Blue Card.

Article 10: “The foreigners, holders of a stay permit for the purpose of study, can request the extension of their stay for labor purposes after the completion of studies without having the obligation to request the right to stay for working purposes provided that there should be a full time working contract issued for working in the respective field of study.”

Thus Romania has introduced its version of the European Union Blue Card, which allows highly skilled third-country nationals to live and work temporarily in the country and ultimately acquire long-term EU residence rights.

To obtain the Blue Card, a non-EU national must be highly qualified, as demonstrated by a post-secondary educational qualification and an annual salary that is at least four times the

¹⁶ See UNHCR Statistical Yearbook 2012, UNHCR, Geneva 2013, p. 96.

¹⁷ See also **Nicole Guimezanes**, *La migration et le droit* in “Revue internationale de droit comparé” no. 2/2014, p. 211.

average gross annual salary for a similar position in Romania. If the foreign national will work in a regulated profession, he or she must also possess the relevant educational qualifications or work experience necessary for the position. No labor market search is required for Blue Card applicants.

Blue Card applications benefit from shorter processing times than typical permits, with even faster processing for applicants who already hold a Blue Card issued by another EU country. Once granted, Romanian Blue Cards will be valid for up to two years — double the validity period of Romanian residence permits.

5. Asylum

Asylum Procedure and Humanitarian Status

A person is considered as being an asylum applicant after expressing orally or in writing in front of the competent authorities his or her wish to request the protection of the Romanian state. The Law No. 122/2006 on asylum ensures the protection of human rights on asylum reflecting Romania's fulfillment of its obligations as an EU member state. This Law also represents the instrumental normative act for combating trafficking in human beings and abuse in asylum procedure. Romanian legislation on asylum has been successively amended starting with 1996 in order to be in accordance with the EU legislation provisions which also, in their turn underwent numerous modifications up to now.¹⁸

The new law on asylum in Romania aims to ensure, through the definition of terms commonly used in the field of asylum and related terminology in this area, compliance with the terms used in Europe, both in order to avoid confusion as well as different interpretations. A series of terms are clearly defined:

¹⁸ See **Adrian Bulgaru**, ...op.cit., p. 96.

protection, asylum seeker claim for form of protection for asylum, foreigner, country of origin, the asylum, refugee status, subsidiary protection (which replaces the term humanitarian protection), temporary protection, family members, unaccompanied minors, displaced persons, massive flow.¹⁹ The law contains also expressly applicable procedural principles and guarantees for asylum such as access to the asylum for any foreign citizen or stateless person requesting Romanian state protection, non-discrimination on grounds of race, nationality, ethnicity, language, religion, social status, creed, sex, sexual orientation, age, disability, chronic disease, belonging to a disadvantaged category, property, birth or acquired status and others, non-refoulement – which states that against the asylum seeker can not be taken measures of expulsion, extradition or forced return to the border or on the territory of Romania, the principle of family unity, the confidentiality of data and information on the asylum application, the best interests of the child, guaranteed for unaccompanied minors, the presumption of good faith.

The Law No. 122/2006 defines the statute of refugee as the form of protection recognized by the Romanian State which is granted to the foreign citizen or to the stateless person who meets the conditions provided by the Geneva UN Convention on the status of refugees of 28 July 1951, to which Romania adhered by Law No. 46/1991 and also the conditions provided by the Protocol on the status of refugees.

The asylum procedure is finalized within 7 days from the moment of communicating the decision to close the file and from the date of the communication of the decision by the

¹⁹ See **Louis Ulrich, Ștefan Stanciugelu, Iris Alexe** (coord.), *Gestionarea Benefică a Imigrației în România*, Fundația Soros România, București 2010, p. 3 et seq.

General Inspectorate for Immigration by which the status of refugee was granted or according to each specific case within 7 days after the recourse or after the pronouncement of the Court. In case of accelerated procedure or border procedure the asylum procedure is completed immediately.

The ordinary procedure for asylum applications in Romania is structured in two phases: administrative and judicial. In the administrative phase the applications for asylum are individually examined by the administrative authorities on the bases of the interview with the asylum applicant, of his or her documents in the personal file and on the basis of information from the country of origin. In the judicial phase the asylum applicants whose applications were rejected can resort to 2 ways of recourse and their situation is going to be analyzed by the Court.

The forms of protection that can be granted to foreign citizens on the territory of Romania are:

- 1) The refugee status
- 2) Subsidiary protection (which was previously defined as “conditioned humanitarian protection”). Under this type of protection the vulnerable categories are taken into account.
- 3) Temporary protection.

Asylum-seekers are one of the most vulnerable groups of people in the world. But among them are people facing even further risks and problems. This includes children who are orphaned or separated from their parents, people suffering from psychological problems, mothers and fathers raising children alone, victims of human trafficking and survivors of sexual and gender-based violence.

Typically, these people cannot advocate on their own behalf and national asylum systems are rarely able to identify them and ensure they receive the tailored social and psychological assistance they need. The fact that they are not identified and helped can, in turn, hinder a proper consideration of their asylum claims as they cannot provide all the required information in a clear way during the refugee status determination procedure owing to their **special situation**.

For the vulnerable categories:

In Romania the asylum procedure for minor children who are not accompanied is a special procedure. Also a special procedure is applied to persons from other vulnerable categories. The minor children who are not accompanied and other persons from vulnerable categories become asylum applicants from the moment they expressed either verbally or in writing this request to the competent authorities.²⁰ The applications for asylum from unaccompanied minors and persons from vulnerable categories are examined and solved with priority. These persons do not have a penal responsibility for illegally enter or stay on the territory of Romania.

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

The refugee status and the subsidiary protection are granted following an individual analysis of the case of each asylum

²⁰ See **Irina Moroianu Zlătescu**,. *Drepturile omului – un sistem în evoluție*, ed. a 2-a rev. București, IRDO, 2008, p. 5 et seq.

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

The subsidiary protection can be granted to a foreigner who does not meet the conditions for granting of refugee status but who has serious reasons to believe that if repatriated to the country of origin, he or she risks a violation of rights which might consist in:

1. sentence to death
2. torture, inhuman or degrading treatments
3. A serious individual death menace of a menace to the integrity of one's persons on reasons of generalized violence in situations of internal or international armed conflict in case the applicant is part of the civilian population of the country of origin

The main rights of those benefitting of refugee status or of subsidiary protection are:

- to remain on the territory of Romania and to benefit of the corresponding necessary documents in order to prove his or her identity when crossing the border;
- to choose the place of residence and to circulate freely;
- to be employed, free to exercise liberal professions and to be engaged in economic activities under the same conditions as those for Romanian citizens;
- to be able to transfer personal assets to Romania;
- the most favorable treatment provided by law for the foreign citizens when acquiring properties and real estate properties;

- protection of intellectual property;
- social and health insurance equal to those of Romanian citizens;
- access to all forms of education;
- equal treatment in exercising religious practices or beliefs;
- protection of personal data;
- the right to association with political purposes and to adhere to professional syndicates;
- free access to legal courts;
- upon request to receive a loan for a period of maximum 6 month with possibility of extension for maximum 3 months if there are no other sources of revenue from objective reasons;
- to have a legal address in Romania;
- to receive upon request any necessary assistance for repatriation.

The temporary protection is a form of protection that is granted collectively in exceptional situations and for a strictly determined period of time. Principles and procedural guarantees:

- access to the asylum procedure
- non refoulement
- nondiscrimination
- the unity of the family
- the supreme interest of the child
- confidentiality
- the presumption of good faith
- removing of criminal liability for entering or illegally being in the country

Asylum statistics

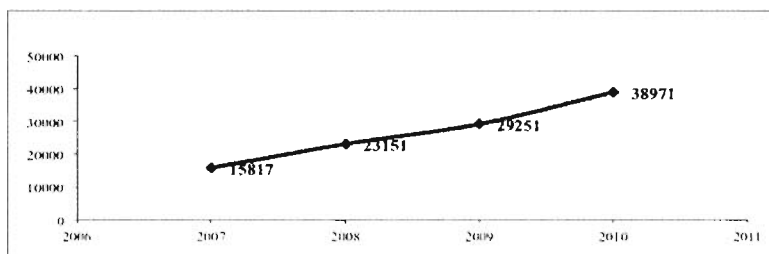
Asylum applications by country of origin (first semester 2011 and 2012):

	2011	2012
Algeria	81	436
Maroc	29	251
Afganistan	36	127
Pakistan	44	122
Siria	13	88
Tunisia	68	59
Bangladesh	12	47
Teritoriile ocupate Palestiniene	11	45
Irak	39	29
Egipt	11	28
Alte țări	209	225
Total	553 Total	1457

These data were issued by: The Romanian Immigration Office

The National Strategy on Immigration 2011-2014 states that in recent years although Romania remains a transit country, it also becoming more and more a country of destination.

The Number of EU and EEA citizens in Romania between 2007-2010



These data were issued by: The Romanian Immigration Office

As of 30.06.2011 in Romania there were legally registered 57,259 foreigners out of which 46,674 with temporary stay and

10,585 with permanent stay. Most of these foreigners (20,581) are family members of Romanian citizens; 9,419 are on the territory of Romania for studies and 5,278 for employment.²¹

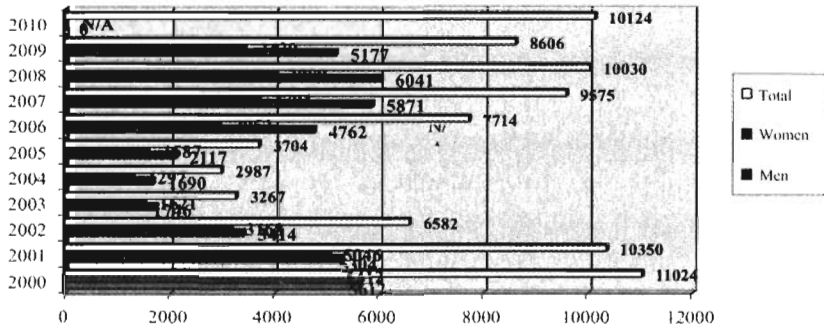
Reasons for which they are in Romania, Number of foreigners legally in Romania and percentage:

Scop	30.06.2011	%
Family member of a Romanian citizen	20581	35.94%
Permanent residence	10585	18.49%
Study	9419	16.45%
Employment	5278	9.22%
Family unity and reintegration Reintregirea familiei	4606	8.04%
Student	2165	3.78%
Other purposes	1171	2.05%
Commercial activities	969	1.69%
Specialization	666	1.16%
Religious activities	614	1.07%
Family member EU citizen	599	1.05%
Detached	326	0.57%
PhD Programme	148	0.26%
Religious and humanitarian activities	37	0.06%
Highly qualified	31	0.05%
Independent	28	0.05%
Scientific research	25	0.04%
Professional activities	7	0.01%
Economic activities	1	0.00%
Persoana întreținere cet. el	1	0.00%
Education activities	1	0.00%
Family member Swiss citizen	1	0.00%
Total	46,674	100.00%

These figures offer us a profile of the immigrant in Romania

²¹ See **Bogdan Păunescu, Iris Alexe** (coord.), *Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească*, Ediție electronică, p.25.

Number of Permanent immigrants in Romania during 2000-2010



These data were issued by: The National Institute for Statistics

Out of the total number of foreigners who have obtained protection in Romania, 73.5% have refugee status, and 26,5% subsidiary protection. Most of them are active adults in the labor market. Only 2,5% are over the age of 65.while 20% are minors.

6. Student and Researcher Status

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

The numbers of young people who opted to study in Romania: Tunisia – 1.164, Israel – 1.002, France – 967, Italy – 950, Greece – 858, Germany – 488, Sweden – 440, Morocco – 431, Turkey – 369 the Serbian Republic – 361.

The most preferred Universities are the University of Medicine and Pharmacy “Carol Davila” Bucharest, UMF

“Iuliu Hațieganu” Cluj-Napoca, UMF Timișoara, the Bucharest School of Polytechnics, the Bucharest Academy of Economic Sciences and the Babeș-Bolyai University in Cluj-Napoca.

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

According to the information from the General Inspectorate for Immigration during the school year 2011-2012 there were issued 1492 permits of stay for studies to foreign citizens from third countries and 270 certificates for studies for citizens of EU and EU Economic Area. The main countries of origin of the applicants are Tunisia, the Republic of Moldova, Morocco and Israel.

Also until 30. 06. 2012 in Bucharest there were already 2404 stay permits for studies.

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

The support offered to these young people is in accordance with the dispositions of the Ministry of Administration and Interior contained in the Protocol signed on 7 September 2012

between the General Inspectorate for Immigration and the National Monetary Printing Office.

Foreign citizens with permanent residence in Romania also benefit of this advantage.

The Protocol also addresses to stateless persons of Romanian origins who were repatriated as a consequence of an international agreement and who do not have the means to cover the fee for the stay permit. Also refugees or people that benefit of subsidiary protection are exempted from the tax for the stay permit accordance with inter ministerial, inter governmental or international agreements to which Romania is part.²² According to Article 5 of the protocol these benefits are granted only once a year and not for those who have lost a school year otherwise than from medical reasons,

To be noted that the General Inspectorate for Immigration offered the same benefits before the signing of this Protocol through an Agreement with the Autonomous Department for the Administration of the State Protocol Patrimony – RAAPPS.

The stay permit for foreigners is granted also on the basis of international documents to which Romania is part.

7. Diplomatic staff: criteria, recent statistics

In Romania, members of the diplomatic staff, of consulates or of the technical-administrative staff of an embassy on the territory of Romania together with their family members have a special regime and so have the representatives of the international organizations. The main regulations which are applied are contained in the Vienna Convention of 24 April 1963 and the Convention of 14 March 1975 on representation

¹⁵ See **Lavinia Barlogeanu** (coord.), *Identitate si globalizare*, Humanitas, București 2005, p. 5 et seq.

of states in their relations with the international organizations universally acknowledged. Also the juridical regime of the diplomatic and consular staff is regulated through statutes and protocols as well as through bilateral agreements between states. The right to free circulation on the territory of the state of residence is recognized by the majority of the world's states. The Ministry of Foreign Affairs officially communicates to all diplomatic missions which are the areas of conflict where the access of diplomatic staff is either forbidden, restricted or not recommended. The Ministry of Foreign Affairs also communicates the procedures for obtaining travel authorization for these countries.

In Romania, like in most countries, the entrance, stay and departure of the diplomatic and consular staff are regulated by special laws on the status of foreigners as well as by circular notes issued by the Ministry of Foreign Affairs and addressed to the respective diplomatic missions. The principle of reciprocity is the basis for all these regulations²³. The principle of reciprocity is strictly respected in the relations between states in order to avoid any advantages or disadvantages which can occur or can be determined by the lack of harmonization between local legislations of countries regarding the diplomatic staff.²⁴ In the Urgency Ordinance No. 124/2002 regarding the regime of foreigners in Romania, Section 2, Article 20 "Types of visas" it is mentioned at point (ix) diplomatic visa and office visa identified by symbol DS.

²³ See **Grigore Geamanu**, *Principiile fundamentale ale dreptului internațional contemporan*, Ed. Didactica și Pedagogică, București, 1967, p. 15.

²⁴ See **Corina Florenta Popescu**, *Cutuma în dreptul internațional public*, Universul Juridic, București, 2012, p. 242; Raluca Miga – Beșteliu, *Drept internațional. Introducere în dreptul internațional public*, Editura Arta Grafică, București, 1998, p.48 et seq.

Article 25 of the same law stipulates “The diplomatic visa and the office visa.

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

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

In Romania the diplomatic cards are of three types (red, yellow and blue):

The Red CD series diplomatic cards are issued to diplomatic, consular personnel, staff of international organizations and their families, holders of diplomatic passports. It gives right of residence and diplomatic immunity on the territory of Romania.

Yellow TC series diplomatic cards are issued to technical-administrative personnel and their families, holders of diplomatic and service passports. It gives right of residence and certain immunities on the territory of Romania.

Blue PS series diplomatic cards are issued to staff of the diplomatic missions or in the particular service of high rank diplomats and to their families. It gives right of residence on the territory of Romania.

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

However the Romanian legislation is not rich in legislative norms regarding the status of diplomatic staff. The Emergency Ordinance No. 195/2002 regarding the regime of foreigners in Romania makes little reference to diplomatic staff and there are no specific regulations in the Romanian legislation with regard to records of diplomatic and consular staff, issuance of travel documents, validity extension regulations etc, which need to be settled through a normative act.

8. Human trafficking

The collapse of communism in Eastern Europe in 1989 has since provided new resources geographical and human for the sex trade and traffic. Indeed, one of the most striking images of the changes in Eastern Europe soon after the fall of the Berlin Wall was that of women lining the highways across the region, offering sex for sale. Political and economic liberalization as well as internal and international militarism created new opportunity structures and daunting economic uncertainties that have produced both a demand for and a supply of sex workers in and from Eastern Europe. The majorities of these sex workers have been and are women and girls. Recent reports consistently note the increased number of women and children trafficked to, through, and from Central and Eastern Europe²⁵. Whether working part-time to supplement income, full-time voluntarily in sex clubs, or forced in the context of

²⁵ See **Morten Kjaerum**, Violence against migrants, migrant workers and their families – speech, the 21st Session of the Commission on Crime Prevention and Criminal Justice, Vienna, in FRA, news and events, 24.04.2012.

trafficking, prostitution is a stable, ever-expanding feature of the global service economy²⁶.

As stated by Franck Laczko from IOM in his paper ~Human Trafficking: The Need for Better Data', it is important to clarify the terms smuggling vs. trafficking. It is an obstacle to creating a workable international definition of human trafficking since it tends to overlap with people smuggling. Smuggling is defined as the "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident." The definition distinguishes smugglers, whose main occupation is transporting migrants via illegal channels, from traffickers, who combine transportation with exploitation. Categorizing these crimes can be difficult, however.²⁷ IOM data show that that there is considerable trafficking within Central and Eastern Europe, and not only between the East and West. In 2001, the majority of trafficking victims assisted by IOM came from Moldova, Romania, and Ukraine. In the majority of cases, the women had been trafficked to countries and provinces in the Balkans, especially Bosnia-Herzegovina, Kosovo, and the Former Yugoslav Republic of Macedonia. IOM data also indicate that trafficking is occurring between Central and Eastern Europe and Asia. For example, in 2000 IOM assisted Romanian and Moldovan women who had been trafficked to Cambodia.²⁸

²⁶ See *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, International Council on Human Rights Policy, 2010, p. 11.

²⁷ See **Frank Laczko**, *Human Trafficking: The Need for Better Data*, International Organization for Migration.

²⁸ See *Human Rights and the Millennium Development Goals in Practice: A review of country strategies and reporting*, OHCHR, Geneva, 2010.

Internal cooperation for combating trafficking in human beings

The national authorities that internally cooperate and have attributions in combating the trafficking in human beings are the following:

The Ministry of Foreign Affairs, the Minister of Labor, Social Protection and Elderly, the Ministry of Administration and Interior, the Ministry of National Education, the Ministry of Health and Family, the Ministry of Justice, the Public Ministry, the National Authority for Child Protection and Adoption and the County and Local Councils have attributions for combating human trafficking²⁹. But NGOs and representatives of the Civil Society can also be involved in combating human trafficking. The great number of national institutions with attributes in this matter justifies the amplitude and diversity of the trafficking in human beings phenomenon. The Ministry of Foreign Affairs also has the obligation to issue and transmit to all stakeholders a list with the states having a high potential for human trafficking and especially the transit countries.

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

By it's entering into force the Law No. 302/2004 on international legal cooperation abrogated the previous national legislation which was incomplete and inconsistent and managed to harmonize the internal legislation with more simplified procedures established by the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU and the Second Additional Protocol to the European Convention on

²⁹ See Internally displaced peopled, OHCHR, Geneva, 2007.

Mutual Assistance in Criminal Matters (Strasbourg 8 November 2001). Thus Law No. 302/2004 becomes the main national instrument for combating trafficking in human beings and organized crime.

International legal cooperation as provided by Law No. 302/2004 establishes as forms of international cooperation the following:

- extradition
- transfer of criminal issue procedures
- recognition and implementation of decisions on criminal issues
- the transfer of convicted persons
- the hearing of witnesses, experts and prosecuted persons
- the communication of procedure documents that are submitted for a criminal trial
- the criminal record

But in spite of enhanced international cooperation the statistics in this matter remain uneven and not always reliable. For instance, a UK inter ministerial report stated that most victims of traffic in Britain came from Nigeria, Vietnam, Albania, Romania and China while the trafficking in human beings increased in Albania with 300%, in Lithuania with 171% and in Poland with 148%. The figures for Romania and China decreased according to the UK Report.³⁰ According to the 2012 Report by the Romanian Ministry of Foreign Affairs and the National Agency for Combating Trafficking in Human Beings the rate of victims of human traffic is of 5.50 compared to 5.46 in 2011 for a total population of 18,916,735 (estimated as of 1 April 2012). The same Report shows that most victims are young women, minors and people with disabilities.

³⁰ See *Report on Migration and International Human Rights Law*, International Commission of Jurists, Geneva 2011.

Most of the victims are women who are forced to practice prostitution:

- 58% from the total of trafficked persons as compared to 51% in 2011;
- 33% were victims of trafficking for forced labor in various sectors of economy as compared with 38% in 2011;
- 11%, mostly children were victims of trafficking forced to beg and exploited by organized crime.

According to the Report 1 of 3 persons annually identified as victims of human trafficking are women.

Thus the dynamics in the trafficking of victims identified in recent years maintains the constant downward trend in the number of persons trafficked annually identified. Thus, in 2012 were identified 1,041 victims, which represents 7 less than in the previous year and 113 fewer than in 2010.

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

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

The Report also highlights as an effective public policies mechanism the 2012-2013 National Strategy in the Field of Prevention, Assistance of Victims and Combating the Trafficking

in Human Beings. The Strategy transposes the Directive 2011/36/EU of the European Parliament and of the EU Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

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

The Strategy offers answers and solutions to the problem of human trafficking on the basis of EU legislation in this field and provides the following measures:

- reconfiguration of the protection and services system for the victims of trafficking;
- strengthening the capacity of early warning and identification of victims and guiding the victims to the providers of special services to which they are entitled;
- enhancing the social inclusion programmes for victims of trafficking;
- more efficient measures for supporting and protecting victims who agree to participate in hearings in Court or to be witnesses in trials for all the duration of the trial and ensuring financial compensation.

The Strategy aims at enhancing the dynamism and efficiency of state institutions and the involvement of International Organizations for combating this phenomenon and for raising awareness of the public opinion with regard to the issue of trafficking in human beings.

9. People Smuggling (smuggled migrants) consists of assisting the illegal immigration of foreigners in order to make a profit.

There are certain regions in Romania which during history were and continue to be intensely exposed to the phenomenon of migration. By its mere geographic position Romania was strongly influenced by the conflict and post-conflicted situations in the ex-Yugoslavian space. It is also confronted with manifestations of criminality from the ex-Soviet space, with influences of the political and social situation from Central Asia or Middle East countries – in this latter case being used as a transit country for reaching West.

Being situated at the confluence of roads connecting the East to the West of the continent and South Asia with Northern and Western Europe, Romania is part of the “balsamic route” for illegal migration.

Illegal migration may be the first step to organized crime. Romania has under surveillance six zones in which illegal migration occurs: at each of its borders with the neighboring countries and the Black Sea area. The areas where illegal migration occurs more often are the Western Border with Hungary and the Romanian air space and harbor areas. After 2003 illegal migrants started to avoid Romania’s borders with the Republic of Moldova and with Bulgaria.

Ever since 2009 Romania was considered by the EU Parliament as a future target for illegal migration. On the other hand, following its economic redress, Romania became an attractive country for citizens coming from Africa and Asia which determined mutations in the phenomenon of illegal migration.³¹ The institutions involved in managing illegal migrations are:

- General Inspectorate for Immigration and its regional structures

³¹ See **Maria Stoicovici**, *România ca țară de origine, ca țară de tranzit și de destinație pentru migranți*, Departamentul de Limbi Străine și Comunicare Interculturală, Academia Militară, București, p. 3 et seq.

- Structures of the Romanian Police
- UNHCR Bucharest
- NGOs:
 - The Romanian Forum for Refugees and Migrants ARCA
 - Romanian National Council for Refugees
 - The Jesuit Service for Refugees Romania
 - The Organizations of Women Refugees
 - Save the Children Romania

During 2012 the border police found 4,922 foreign citizens involved in illegal migration which represents with approximately 56.6 % more than in 2011. 2,329 citizens were illegally entering the country in 2012 compared with 1,537 citizens in 2011. Compared to 2011 the flux of migration at the Northern border (Ukraine) and at the Eastern border (the Republic of Moldova) are slightly higher.

During the first half of 2012 the new route through South – West of Romania: Turkey, Greece – Macedonia/Albania – Kosovo – Serbia– Romania – Hungary recorded an increase in illegal immigrants. Also following the conflicts in Northern Africa and Middle East, there is a significant increase in migrants from Algeria and Morocco.

The most important increase in illegal migration cases was noticed at the border with Serbia where 1.758 persons were retained for the intention to illegally enter Romania. During the past years there was no phenomenon of illegal migration at this border. The majority of persons who tried to illegally enter Romania were from Algeria, Tunisia, Morocco, Pakistan and Afghanistan. This phenomenon had an ascendant curve until the second half of 2012 after which it began to decrease.

An important aspect of illegal immigration is also trafficking in human beings. Last year there were 12 cases of human

trafficking, 26 smugglers of immigrants were identified and 22 victims. In accordance with the Law No. 39/2003 there were identified 3 organized groups committing the crime of human trafficking.

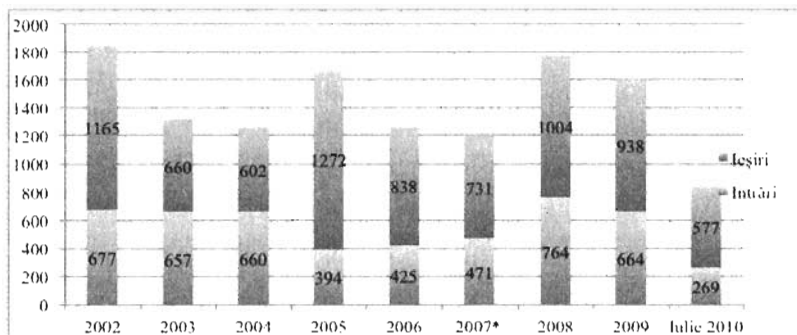
Illegal immigration is envisaged as an important topic in the National Strategy of Romania for Immigration 2011–2014. Romania's adherence to the Schengen space and its social and economic development are most likely leading to an increase of Romania's attractiveness as a transit or even destination country. This phenomenon exerts pressure on the national system of managing immigration and asylum. Romania is part of the Eastern migration routes which start:

1. from Middle East via Istanbul
2. India, Pakistan and China via Moscow
3. Bangladesh, Sri-Lanka, African countries via Odessa.

Many illegal immigrants try to cross the Hungarian border hidden in vehicles or using false identity documents. Their target destination is Western Europe via Hungary, Slovakia, and Czech Republic. Illegal immigrants also come from Albania, Iran, Lebanon, Somalia, India, Morocco, Nepal, Ukraine, Palestine, Nigeria, Tunisia, Egypt, Syria, Sri Lanka and Russia.

Strengthening the border control led to a decrease in illegal crossing of the borders.

Graphic nr. 5 Number of Foreigners identified who tried or managed to illegally cross the Romanian border



These data were issued by: The General Inspectorate of Border Police

The statistical data from the Border Police show a relatively constant number of citizens from third countries that illegally cross the borders. (Since 2007, the figures are only for citizens of third countries)

The activity Reports of the Border Police regarding the smuggling and traffic of migrants present the following situation:

- In 2008, were identified 546 groups of migrants with 232 smugglers and 1628 migrants out of which 39 groups (143 smugglers and 252 migrants) were organized to smuggle migrants;
- In 2009 were identified 376 groups of migrants out of which 229 smugglers and 1255 migrants out of which 14 groups (46 smugglers and 68 migrants) identified as organized to commit smuggling of migrants;
- In 2010 were identified 271 persons involved in recruiting, guiding and transporting migrants compared to the year

2009 when were identified 209 guides, smugglers – which means an increase with 30.6% in their number.

Illegal immigrants are present in the informal economy of Romania and their status is not regulated.

Informal discussions by authorities with the Chinese citizens suggested a possible raise in illegal stay of Chinese citizens on the territory of Romania.

There are cases of citizens from the Republic of Moldova, Ukraine and from Asia working in construction works illegally, working in night clubs or even in agriculture.

Romanian Authorities supported by European Institutions through projects and financial support established the Visas-online system, the IT system of managing foreigners, the EURODAC system, thus managing to strengthen border security and to rehabilitate some accommodation centers for illegal immigrants and refugees.

The UN Rapporteur for the rights of migrants, Jorge Bustamante, was stating in June 2009 on the occasion of his mission to Romania that although there was a decreasing tendency in the human trafficking as a general phenomenon the immigrants smuggling is slightly increasing with the purpose to exploit their work and make a profit.

The Rapporteur visited centers of migrants and there was no complaint with reference to the way they were treated by the Romanian authorities. After individual discussions with migrants it was concluded that they came to Romania either for obtaining better earnings than in their country of origin, or to leave from here to other European countries.

10. Economic migration

In order to prepare the economy of the EU for its redress from the global economic and financial crisis, the European

Commission proposed the economic strategy Europe 2020. This strategy reiterates the idea of competitiveness and economic growth considering that all measures taken in this context both at European as well as at national level must focus on promoting knowledge and innovation education and IT for sustainable development and a more efficient use of resources, an economic growth favorable to social inclusion, a greater participation on the labor market, enhancement of competencies in order to fight poverty. The strategy Europe 2020 highlights the importance of the connection between migration and the labor market.

The mobility of the labor force in the EU space already represents a mass phenomenon which affects all aspects of Romanian society, including immigration. Migration for work is a circular phenomenon and this type of mobility for economic reasons to and from Romania is represented by both migrants flows and immigrants inflows.

Even if Romanians continue to migrate abroad to find better working conditions, the number of Romanian emigrants is decreasing. The main countries of destination of Romanians working abroad remain Spain and Italy – 75% of Romanian emigrants go to work in these countries. They represent an active population with ages between 15 and 64, men and women alike, Men usually work in constructions while women in housekeeping or babysitting. As it is well known there are highly qualified Romanian specialists who migrate abroad. They are qualified in medicine, education, IT. This is a long term migration phenomenon and the destination countries for these highly qualified migrants are UK, France, Northern countries or other non EU destinations such as the USA or Canada.

The National Strategy on Immigration 2011-2014 states that in recent years although Romania remains a transit country, it also becoming more and more a country of destination. This evolution in the phenomenon of migration shows that Romania could fill the gap of this lack of Romanian specialists by attracting and encouraging highly qualified immigrants from third countries.

The influx of foreigners coming to Romania is increasing in recent years. As an EU member country and due to its economic potential, Romania becomes a more and more attractive destination for immigrants. It is expected that Romania will face a continuous rise in the influx of immigrants that will be followed by a relative balance between immigrant's influx and migrants flows.

Until 2004 there was a relatively small number of immigrants most of them coming from Syria, Jordan, Iran, Egypt, China and Turkey. Most of the immigrants were men who came to Romania for trade due to a favorable legislation for foreign investments or for opening a business.

Starting with 2005-2006 there is an increase in the number of immigrants with the arrival of the Chinese and Turkish immigrants. The Chinese small entrepreneurs concentrated in the wholesale trade in the outskirts of Bucharest. Then Romanian employers began to bring Chinese workers in construction works, shipyards roads and bridges as well as textile trade. Chinese women were employed in the clothing sector, Turkish workers were concentrated about in the same sectors of the economy as the Chinese workers.

The immigrants from the Republic of Moldova represented during the above mentioned period the main community of immigrants in Romania due to the fact that they share the same

language and culture with Romanians. They usually work in constructions, clothing industry, trade, finance and agriculture.

With the adherence of Romania to the EU, the year 2007 becomes a turning point in the management of immigration in Romania. As an EU member Romania would concentrate its immigration policy on the phenomenon of third countries citizen's immigration. Thus Romania implemented a new legislation for the EU and EEA citizens and their family members by transposing the EC Directive 38/2004 regarding the right to free movement and stay on the territory of member states of the EU and EEA citizens and their family members. This resulted in a decrease in the number of immigrants from third countries.

Thus during the period 2007-2010 there is a massive increase in the number of economic immigrants to Romania and respectively in the number of work permits for migrant workers in Romania when the country was in economic growth while there is a decrease in the number of immigrants during the period of economic and financial crisis of the years 2009–2010.

No. of work permits peers year

Year	2004	2005	2006	2007	2008	2009	2010
Work permits	1364	2716	6148	6341	15000	3959	2528

These data were issued by: The Romanian Office for Immigration and the Ministry of Family and Social Protection

The most recent normative act which allows the access of asylum seekers on the labor market is Ordinance No. 392/2008 and 613/2008, which is applied to those asylum seekers which are still during the determination procedure for a form of protection after a one year expiration of the application for asylum.

The National Agency for Employment is dealing with assisting asylum seekers. Foreigners register at the National Agency for Employment stating that they are in search for employment. The Agency has the obligation to provide the integration programme for each applicant and to identify vacancies and inform the interested persons about these vacancies. The local agencies for employment have the same obligations through a representative of the General Inspectorate for Immigration. The foreigners have to have a good reason for refusing the employment offered by the National Agency or by the local agencies. Each applicant is the beneficiary of integration programmes.

II. MIGRATION IN A BROADER PERSPECTIVE

1. What types of regulations and legislation are there or should there be that take mobility into consideration? (Existing regulations regarding foreigners in Romania)

The following legislation and normative acts regulate the foreigner's regime in Romania and their access to the Romanian labor market:

- Government Ordinance of Urgency No. 194/2002 on the foreigner's regime in Romania;
- Government Ordinance of Urgency No. 56/2007 on employment and deployment of foreigners;
- Government Ordinance of Urgency No. 44/2004 on the social integration of foreigners who acquired a form of protection or a right to stay on the territory of Romania;
- Law No. 122/2006 on asylum in Romania;
- Law No. 157/2011 which amends and complements a series of normative acts regarding the regime of foreigners in Romania. **Effectively as of 1 August 2011** the Romanian employers can request labor authorizations for highly

qualified foreign workers. The law enables citizens of third countries to receive the EU Blue Card.

To be noted that by its entering into force the Law. 302/2004 on international legal cooperation abrogated the previous national legislation which was incomplete and inconsistent and managed to harmonize the internal legislation with more simplified procedures established by the EU Convention of 29 May 2000 and by the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg 8 November 2001). Thus the Law No. 302/2004 becomes the main national instrument for combating trafficking in human beings and organized crime.

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

The National Strategy on Immigration for 2011–2014 focuses more on the common interests and on the cooperation between the EU member states in order to manage migration, especially in the event of Romania's entry into the Schengen space, for securing borders and for informing foreigners before reaching the country through Romania's diplomatic missions. The Strategy also focuses on providing employment for foreigners who graduate a university in Romania, on institutional cooperation and on training the personnel of public institutions in view of working with foreigners and assisting them in their requests and needs.

The Strategy represents the vision of the Romanian state with regard to managing migration. There is an effort to harmonize European legislation with national legislation.

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

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

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

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

2. What are some of the thorny questions and the responses offered? (Challenges)

In case of massive influx of immigrants the national legislation states that the foreigners that arrived on the territory of Romania with a massive influx of immigrants benefit of

temporary protection from the date provided by the decision of the EU Council. Although this regulation of temporary protection transposes the EU norms, the Romanian state can be thus hold responsible for violating the disposition of the UN Convention of 1951 with regard to refugees.

It is obvious that this temporary status granted to those seeking protection as a consequence of an armed conflict represents a hybrid between respecting and violating the UN Convention on refugees.

To be also noted is that the national legislation with regard to massive influx of immigrants addresses a series of issues to which the UN Convention of 1951 did not make reference. According to the UN Convention the granting of refugee status is based on the analysis of an individual request and not on the existence of a massive influx of persons in need of immediate protection.

Regarding persecution, there are not a limited number of agents, causes or situations of persecution. There is not an exhaustive list of reasons for persecution. The norms of implementation of Law No. 122/2006 transpose the provisions of Directive EC 2004/83 regarding the criteria for persecution.

The Law No. 122/2006 also establishes the causes for exclusion from the refugee status are. The law excludes from the refugee status those foreigners or expatriates who committed crimes against humanity and peace, war crimes or other serious crimes mentioned in the international Treaties to which Romania is part, such as authors of terrorist acts or people who represent a menace to the public order and national security (Article 28 of Law No. 122/2006).

These provisions are issued in the context of EU states general tendency to take care and protect mainly the security of their own citizens. But the provisions on the cessation

withdrawal and cancellation of a form of protection from reasons of national interest, national security or public order adopted by the Romanian legislation do not reflect the spirit of the UN Convention of 1951 regarding refugees.³² However, the Romanian legislation is not rich in legislative norms regarding the status of diplomatic staff. The Urgency Ordinance No. 195/2002 regarding the regime of foreigners in Romania makes little reference to diplomatic staff and there are no specific regulations in the Romanian legislation with regard to records of diplomatic and consular staff, issuance of travel documents, validity extension regulations etc, which need to be settled through a normative act.

3. The impact of history on migration flows

In ancient times the ancestors of the Romanians leaved on the territory of Dacia, speaking a Romance language. They inhabited a territory that included what later became the entire Roman province of Dacia, but also regions outside it: Crisana, Maramures, Moldova, eastern Muntenia. All this territory represented the Dacian State which flourished under its leaders Burebista and Decebalus until Dacia was conquered by the Roman emperor Trajan in 106 A.D, who colonized part of its territory. Being a rich Roman province, Dacia represented both economic and military strategic interest for the Roman Empire.

As it is known, beside the north-Danubian Romanians, who are called Daco-Romanians, in the Balkan Peninsula, more precisely in Northern Greece, in Albania and in Macedonia, live several hundreds of thousands of Macedo-Romanians (Aromanians) and Megleno-Romanians³³.

³² See **Cristina Narcisa Vergati**, *Statutul juridic al refugiaților*, IRDO, București, 2009, p. 4 et seq.

³³ See **Victor Dan Zlătescu**, *Mari sisteme de drept contemporan*, Pro Universitaria, București, 2012, p. 5 et seq.

By the middle of the 3rd century A.D. major migrations of barbarian tribes had begun, In 271 A.D. Emperor Aurelian concluded that Dacia was overexposed to invasion and withdrew with his army across the Danube. All soldiers, imperial officials and merchants departed. But the peasants remained and withdrew in the mountains to live a pastoral life often exposed to the danger of attack by migratory people.

Without Rome's protection, Dacia became exposed to the invading tribes that targeted richer lands. The Visigoths, Huns, Ostrogoths, Gepids and Lombards swept over the land from the 3rd to the 5th centuries and the Avars arrived in the 6th century.

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

By its geographic position, Romania is connected to the Central Europe by the Danube River while in the East it is bordered by the Black Sea. Its history of hardships and its geo-political position conferred to the people of Romania a high – level of tolerance for minorities, and respect for their cultural identity and religion. History itself modeled the Romanian's positive attitude towards tolerance and respect of diversity.³⁴ Throughout its history Romania has been constantly struggling to keep its freedom and identity trying to maintain its own

³⁴ See **Irina Moroianu Zlătescu**, *Constitutional law ... op.cit.*

balance between the great powers of the Ottoman Empire, the Austro-Hungarian Empire and Russia.

In Romania's modern history, the statistics of migration outflows show mainly periods of migration of minorities especially after World War II. In the late 19th and 20th centuries, Romania was predominantly a country of emigration in the wake of territorial changes during the First and Second World Wars when it experienced the transfers of its minorities. 200.000 Hungarians left Transylvania between 1918-1922, while part of the Jewish population was deported during the Second World War. Approximately 70.000 ethnic Germans were deported by the communist authorities to the Soviet Union following the Second World War³⁵.

Thus, during the past century, after the Second World War and the establishment of the communist rule, Romania was mainly a country of emigration rather than immigration. Until early 1990, migration in Romania was mostly linked to ethnic minorities which were the first to emigrate: Germans, Jews, Armenians, Hungarians, Greeks, etc. These minorities were not simply refugees: they moved to countries where they had historical, ethnical and cultural ties (e.g. Germany, Hungary, Israel, Greece, USA in the case of Armenians). They migrated during communism in the hope for a safer and better life in the countries of their ancestors. The inflexible totalitarian system also caused many Romanians to emigrate during and also short after the fall of the Communist regime in Romania.

³⁵ See: **Andreea Ripceanu**, *Istoria statului și dreptului românesc. Curs universitar*, Universul Juridic, București, 2009; **Emil Cernea, Emil Molcuț**, *Istoria statului și dreptului românesc*, Universul Juridic, București, 2006; **Costică Voicu**, *Istoria statului și dreptului românesc*, Universul Juridic, București, 2006; **Paul Gogeanu**, *Curs de istoria statului și dreptului românesc*, Facultatea de Drept București, 1985; **Dumitru Firoiu**, *Istoria statului și dreptului românesc*, Editura Didactică și Pedagogică, București, 1976.

As a result of wars, immigration and territorial conflict, there were communities of Hungarians and Saxons in Transylvania, Jews in all the regions of Romania, Armenians and Greeks in Moldova and Wallachia, Slovaks, Czechs and Ruthenians in Western Transylvania, Turks and Tartars in Dobrogea. The gypsy/roma minority was also scattered in all these regions.³⁶ After the World War II the Romanian state succeeded in retaining Transylvania and all territories in the west of the country, while the north of Bucovina was incorporated in Ukraine and Basarabia became the Soviet Republic of Moldova known today as the Republic of Moldova its population sharing the same Romanian origins, the same language, tradition and culture as those of the Romanian people.

Between 1950 and 1989 approximately 240,000 Romanian citizens settled in Germany, even if Saxons and Schwabs represented only 1.6% of the population according to the 1977 census, they constituted 44% of the emigrant population between 1975 and 1989. Ethnic Hungarians were in a slightly different situation, considering that their home country was also communist. However, beginning with 1985, Hungarians and Szeklers emigrated in increasing numbers across the border. In this case the vast majority of those leaving Romania used mainly illegal (at that time) strategies such as crossing the green forest border with no papers and living in Hungary with no residence permit, etc.

Since Romania is part of the European Union, the movement of the workflow to the West European destinations has increased because of the unrestricted access to many labour markets. Nevertheless, Romania suffered since the beginning, especially middle of the 1990s, an alarming emigration of highly qualified specialists. The most usual trajectory has been for study scholarships offered to the top ranking Romanian

³⁶ See **Victor Dan Zlătescu, Irina Moroianu Zlătescu**, op.cit.

students by universities in the USA, UK, Ireland, France and Germany, followed by secure and well paid employment possibilities on these host countries' markets. Large salaries and a by far more prestigious social status constantly encourage Romanian intelligence emigration. The most notable areas of emigration study and employment in this sector are Sciences and Human Rights: Computer Sciences, Political Studies, and International Law.

The emigration outflow has started immediately after the fall of the Iron Curtain in the very early 1990s and mostly stopped at the end of the same decade, while the students outpour is still an issue. Thus, the Romanian academia and society lost its very best and skilled specialists in all fields at the very start of its troublesome transition. This may be considered an important bottleneck for the country's progress during the transition period.

Romania expects an increase in the number of immigrants in the coming years, especially after it joins the Schengen Convention. Nevertheless, a fact that the authorities must cope with is this "attractiveness" will be the same for both legal and illegal immigrants.

The Romanian migration changed from a circulatory flow, in the 1990s,³⁷ to a cyclical and not permanent phenomenon. Migrants from Romania move, most of the time, to compensate for the economic crisis. The biggest migrant communities of Romanians, from Italy and Spain, are usually made up of workers with previous experience not only of external migration, but also internal migration, generated by the two internal domestic migration flows: one from the late 1980s, when the communist regime moved hundreds of thousands of people

³⁷ See **Irina Moroianu Zlătescu, Ioan Oancea**, *Drepturi ale persoanelor aparținând minorităților naționale*, IRDO, București, 1993, p.7 et seq.

from the countryside to the outskirts of the big cities, and the second flow, when the closedown of many industrial sites created an inverse flow, from the urban to the rural areas, especially in the North-East of Romania.³⁸ Nevertheless, no uncontrolled migration from Romania took place after 2007, in spite of the increase with 150% of the residence permits for Romanians in countries like Italy.

The migration flows from Romania indicate a pattern of integration in Europe by a circular professional migration able to generate a type of “horizontal cultural exchange” and a new concept of European citizenship.

As far as immigration to Romania is concerned most of the foreigners with a legal status come overwhelmingly from Moldova and they usually settle in the capital, Bucharest.

As also shown the influx of foreigners coming to Romania has increased in recent years. As an EU member country and due to its economic potential, Romania becomes a more and more attractive destination for immigrants. It is thus expected that it will face a continuous rise in the influx of immigrants that will be followed by a relative balance between immigrants’ influx and migrants’ flows.

There are certain regions in Romania which, throughout history, were and continue to be intensely exposed to the phenomenon of migration. By its mere geographic position Romania was strongly influenced by the conflict and post-conflict situations in the ex-Yugoslavian space. It is also confronted with manifestations of criminality from the ex-Soviet space, with influences of the political and social situation from Central Asia or Middle East countries – in this latter case being used as a transit country for reaching West.

³⁸ See **Maria Stoicovici**, op.cit. See also **Gabriel Remus Anghel și István Horváth** (coord), *Sociologia migrației. Teorii și studii de caz românești*, Polirom, Iași, 2009, p.9 et seq.

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