

THE STATUS OF THE MINOR IMMIGRANT IN THE INTERNATIONAL AND THE EUROPEAN UNION LAW

*Lucia AVRAM**

Abstract

The author of this article tries to analyze the main legal norms that must be taken into consideration when we speak about minor immigrants. In this article, the author will present the main international legislation regarding the rights of the children living abroad during the period after the fall of the Communist regimes (1989) and the period after 2007, when Romania became a Member State of the European Union.

Key Words: *alien, foreigner, minor, residence permit.*

JEL Classification: [K37]

1. Introduction

As a Romanian child with both parents working in Italy since the age of 9, I had the opportunity to be subject of the international law regarding the rights of the immigrants and to see the difference through the years, the changes that those rights encountered, between the period that I call “after 1989 and before 1st of January 2007” and “after 1st of January 2007”, the Yugoslavian war in 1999 and the Syrian war and the “wave of refugees” since 2015.

For all those periods, the immigration is a key consequence, most of the time difficult to handle and the respect of the human rights becomes a real problem.

The migration is the movement of a person or a group of people, to settle in another place, often across a political or administrative boundary. It is known historically, that people have always had migratory lifestyles. Migration can be temporal or permanent, and it may be voluntary or forced. Immigration is when people move from other places into a place to settle, while the emigration is the act of leaving one's own country to settle permanently in another.¹

A foreigner is a person who is not a citizen or subject of the state or country where he lives. Their rights and obligations, the conditions regarding their staying and leaving, are established by every country's legislation.²

* PhD student, the National School of Political Science and Administrative Studies, Bucharest.

¹ <https://en.oxforddictionaries.com/definition>.

² Raluca Miha Beșteliu, *Drept internațional public, vol.1, ediția 3*, Editura C.H. Beck, p.145.

A “child” as defined in Article 1 of the Convention on the Rights of the Child (CRC)³, means” every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”.

The Convention on the Rights of the Child has transformed the way we view children and provided the impetus for further standards to advance their rights, by creating an international framework for the protection and promotion of the human rights and fundamental freedoms of all persons under age of 18.⁴

The office of the UN High Commissioner for Refugees has developed the Guidelines for the Formal Determination of the Best Interest of the Child (2006)⁵. In terms of actions by UNHCR, the word “child” refers to all children falling under the competence of the Office, including asylum-seeking children, refugee children, internally displaced children and returnee children assisted and protected by UNHCR and stateless children.

Regarding immigrant minors, we can distinguish between various categories: the minors born abroad that return regularly to their destination state to join their parents, the minors immigrating along with their family, the minors that are refugees or asylum seekers, the children in mixed families and the unaccompanied minors.

2. The period between December 1989 and January 2007

December 1989 is represented by the revolutionary wave that resulted in the end of communist rule in Central and Eastern Europe and beyond. The events of the full-blown revolution began in Poland in and continued in Hungary, East Germany, Bulgaria, Czechoslovakia, and Romania.

During the communism period was very difficult for the Romanians to cross the borders and they could do it just as tourist, in groups organized by the Local Tourism Agencies, with a Visa¹⁶, in the other communist countries. They also had the right to travel in other countries but was very difficult: most of the traveler were sent with work purposes by their employees, while others had to respond to many conditions and demonstrate a large amount of money, putting their houses or cars on guaranty in case something happen in the guest country.

After December 1989, all the borders were opened and Romanians could travel freely, for 90 days, and no Visa were needed but with a budget established by the Government. Children under age of 14 had a picture on one parent’s passport and only if he was travelling alone could have an individual passport⁷ After 90 days and with the will of getting a residence abroad, a Visa was needed.⁸

³ Adopted on 20 November 1989 by the General Assembly of the United Nations.

⁴ 8 Candles – The Convention on the Rights of the Child Reaches Majority, Swiss Agency for Development and Cooperation, Imprimerie Constantin SA, Sion, Switzerland, p. 7.

⁵ <http://www.unhcr.org/4566b16b2.pdf>.

⁶ Decree-Law no. 156/1970 on the passport regime.

⁷ Decree-Law no. 10/1990 on the regime of passports and travel abroad.

⁸ <https://roma.mae.ro/it/node/762>.

Statistically, in 1990 a number of 96.929 Romanians left the country, 44.160 in 1991 and 31.152 in 1992 and the number decreased over the years, fact that demonstrate how the people took advantage of the freedom after the falling of the communist regime.⁹

The first Bilateral agreement was signed between Romania and Germany in 1992, the second in 1999 with Switzerland, then in 2002 with Spain, in 2003 with France and in 2005 with Italy, which also opened the doors to immigration flow.

In 2002, my sister and I, as minors, were subjects under the Family Reunification legislation¹⁰ regarding the immigrants under age of 18th, in force until 1st of January 2007, when Romania join the European Union, necessary to obtain an entry visa in Italy, that was required by the Immigration Office our place of residence. At that time, and still nowadays, the procedure for family reunification consisted on verification of the objective requirements for the issue of the clearance (stay permit, income, accommodation)¹¹, and on verification of the subjective requirements for the release of the entry visa (family relationship, and other features of the persons that the reunification concerns).¹²

As a child, was very difficult to stay nights and days, during cold winter or hot summer, at the Italian consulate in Bucharest and then hours at the Immigration Office in Rome, answering different questions about my family and sign with fingerprints. Moreover, several controls were made by the Italian police at my father's work and at home, to make sure that our statements were for real and not just to obtain the papers. Especially when children are involved, in Italy the accommodation should be congruent with the house building standards, by means of the certificate released by the Local Authority Office or the certificate of sanitary and hygienic suitability.

Moreover, is needed the Certificate from the Registry Office concerning reunification, stating the family relationship, which can be presented directly to the home country by the parent concerning reunification. Such certificate is to be translated, legalized and validated by the Consular Authority of the home country/country of origin of the foreigner; if there are doubts concerning the truth of the family relationship, verifications would be activated (DAN test at applicant's expense).

This last point is difficult to prove the children are coming alone, by boats, or coming with the parents but without any paper to demonstrate the family relationship.

⁹ Sandu et. Al., *Institutul Național de Statistică*, 2004, p.25.

¹⁰ <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2001/gennaio/circ-interno-13-11-2000.html>.

- Art. 29.6 Legislative Decree no. 286 of 25th July 1998, concerning the immigration rules and rules on the status of a foreigner: *“E' consentito l'ingresso, per ricongiungimento al figlio minore regolarmente soggiornante in Italia, del genitore naturale che dimostri, entro un anno dall'ingresso in Italia, il possesso dei requisiti di disponibilita' di alloggio e di reddito”*, Legge Bossi-Fini no. 189 del 30.07.2002, *“Modifica alla normativa in materia di immigrazione e di asilo”*.

¹² <http://www.meltingpot.org/Practical-instructions-Procedure-for-family-reunification.html>.

During the procedure, the Police headquarters (*Questura*) check that there are no obstacles to the entry on the national territory of the person involving reunification and that all the requirements have been fulfilled. At this point the Immigration Office either releases the clearance (*nullaosta*) or denies it.

The minor is enrolled in the residence permit or residence card of one or both parents up to the age of fourteen and follows the legal status of the parent with whom he lives. At the end of the fourteenth year of age the “family reunification permit” (*permesso di soggiorno per ricongiungimento familiare*) is changed with a “Residence Card for family reasons” (*Carta di soggiorno per motivi familiari*) valid until the age of majority.

3. The period after January 2007

Romania is a European Union member country since 1st of January 2007. Since then, the citizens and their family members have the right to move and reside freely within the territory of the Member State, according to the Directive 2004/38/EC.¹³

Among conditions, all Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State. The Union citizen’s departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, if the children are enrolled at an educational establishment, for studying there, until the completion of their studies.

Moreover, according to the Law no. 248/2005 on the status of the free movement of Romanian citizens abroad¹⁴, minors may travel abroad only with the consent of their parents or legal representatives. By legal representative is meant the person designated, according to the law, to exercise the rights and to fulfill the parental obligations towards the minor.

According to the Government Emergency Ordinance No. 194/2002 on the regime of aliens in Romania¹⁵, a minor alien whose parent benefits from the statute of refugee or from subsidiary protection or holds a stay permit in Romania, under the condition that this permit is valid at least for 90 days from the date the entry visa is issued, can receive a permit for staying in Romania. This law concerns only the citizen of the Non-European Union countries.

Many foreigners leave the whole family in their countries of origin, fact that can lead to many risks, especially when minors are involved. For this reason, there is a family reunification permit: to keep immigrant families together.

¹³ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004L0038-20110616&from=RO>.

¹⁴ <https://lege5.ro/Gratuit/gmzdnqrue/law-no-248-2005-on-the-status-of-the-free-movement-of-romanian-citizens-abroad>.

¹⁵ <http://www.refworld.org/docid/544676df4.html>.

The Directive on the right to family reunification¹⁶ establishes common rules for exercising the right to family reunification in 25 EU Member States (excluding the United Kingdom, Ireland and Denmark). It determines the conditions under which family reunification is granted, establishes procedural guarantees and provides rights for the family members concerned.

Once admitted in the Member State, family members receive a residence permit and obtain access to education, employment and vocational training on the same basis as the sponsor. A sponsor is the alien holding a residence permit or a Blue Card of the European Union issued by the Immigration Office, who requests family reunification or whose family members request family reunification with him.¹⁷ The EU Blue Card is a special residence permit issued by the Questor (*Police Commissioner at Provincial level*) to highly qualified foreign workers, if they have a job contract or a binding job offer and are the holders of a residence permit for work reasons. After a maximum of five years of residence, family members may apply for an autonomous permit.

A Case-law of the Court of Justice¹⁸, the European Court of Justice has underlined that Member States must apply the rules of the Directive in a manner consistent with the protection of fundamental rights, notably regarding the respect for family life and the principle of the best interests of the child.¹⁹

4. Child protection with parents leaving for work abroad²⁰

According to the Romanian legislation, moving children in the country and abroad is done with the knowledge and consent of both parents, any disagreements between parents on the expression of this agreement shall be settled by the court.

The Article 104 of the law states that the parent that goes for working abroad must notify the public service of social assistance at least 40 days before leaving the country. The notification should contain the name of the person that will oversee the minor during this period. The person must be part of the family, aged of at least 18 years old and to meet the material and moral conditions necessary to raise and care for a child.

¹⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0086>.

¹⁷ Article 2 of the Emergency Ordinance no. 194/2002 on the regime of aliens in Romania.

¹⁸ C-540/03, European Parliament v Council of the European Union. Immigration policy, 27 June 2006, available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62003CJ0540&from=EN>.

¹⁹ Article 28.3 - Legislative Decree no. 286 of 25th July 1998, concerning the immigration rules and rules on the status of a foreigner: *“In tutti i procedimenti amministrativi e giurisdizionali finalizzati a dare attuazione al diritto all'unita' familiare e riguardanti i minori, deve essere preso in considerazione con carattere di prioritari il superiore interesse del fanciullo, conformemente a quanto previsto dall'articolo 3, comma 1, della Convenzione sui diritti del fanciullo del 20.11.1989, ratificata e resa esecutiva ai sensi della legge 27.05.1991, no. 176”*.

²⁰ Law no.272/2004 on the protection and promotion of child rights.

The court will order the temporary delegation of the parental authority of the child to the designated person, during the absence of the parents, but not more than one year.

The procedure for monitoring the way of raising and care of the child with parents left for work abroad, as well as the services they can benefit from, are determined by a Government decision, at the proposal of the Ministry of Labor, Family, Social Protection and the Elderly, in collaboration with Ministry of Regional Development and Public Administration.

The public social assistance service and the county center of resources and educational assistance have the obligation to develop specialized counseling services for the child who returned to Romania after having stayed abroad with parents longer than one year.

5. The unaccompanied minors in Italy

On May 14, 2008 the Council of the European Union took a Decision to establish the launch of a European Migration Network (2008/381/EC)²¹, for responding to the information needs of both EU and national institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum.²² The purpose of this research is to deepen the knowledge of policies regarding unaccompanied minors within the European Union; to provide suggestions for possible improvements in reception and integration procedures within the Member States; and to highlight and allow the sharing of good practices regarding the sustainable return of unaccompanied minors to their countries of origin.

The description of “unaccompanied minors” is the one specified in Article 2 of Council Directive 2001/55/EC²³: “third world-country natives or stateless persons below the age of eighteen, who arrive on the territory of Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into care by such a person, or minors who are left unaccompanied after they have entered the territory of Member States”.

According to this research, most of the unaccompanied foreign minors come from the periphery of the world economic system. The testimonies of the minors themselves and the analysis of the living conditions in their countries of origin suggest that migration is perceived as one of the most important ways to improve their future as well as their families’ socio-economic conditions.

Minors rights are guaranteed by the New York Convention on Children Rights of November 20, 1989 and the European Convention on Children’s Rights

²¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:1310007:00 12:EN:PDF>.

²² Unaccompanied Minors: Quantitative Aspects and Reception, Return and Integration Policies. Analysis of the Italian Case for a Comparative Study at the EU Level, Edited by the Italian National Contact Point within EUROPEAN MIGRATION NETWORK EMN, IDOS Research Centre, Rome, 2009.

²³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML>.

(Strasbourg, January 25, 1996). The “Committee for Foreign Minors” is the appropriate body in charge of overseeing the residence conditions of foreign minors who are temporarily admitted on the national territory, as well as coordinating the activities of the involved administrative bodies.

About the admission conditions for foreign minors, we need to distinguish between accompanied and unaccompanied minors. In the first case, minors are entrusted to relatives within the third degree - who are regularly residing on the national territory - by means of a formal procedure. In the second case, they are reported as residing in European countries without their parents or any other adult who can be legally responsible for their representation or assistance.

Foreign minors in Italy are granted the right to education, to health care and to the same labor protections as for Italian minors (including the prohibition of working if the minor is below 16 years of age and has not yet fulfilled school obligations). Moreover, unaccompanied minors are legally granted special protection and assistance, such as accommodation in a safe place, the principle of *non-refoulement*, the right to a “minor age” residence permit and the possibility of recurring to guardianship or foster care. The *non-refoulement* is a fundamental principle of international law which forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on race, religion, nationality, membership of a social group or political opinion.²⁴

In case an unaccompanied foreign minor applies for international protection, the authority receiving the application immediately suspends the usual procedure followed by the Committee for Foreign Minors for the time being; the asylum application is then brought to the attention of the Juvenile Courts having territorial jurisdiction; and finally the application itself is confirmed by a guardian, who is appointed by the Tutelary Judge and who will provide assistance during the whole procedure of examination of the application²⁵. At the same time, the minor is reported to the Committee for Foreign Minors, which would be responsible for him in case of a negative response to the application for asylum.

6. The *ius soli* – the birthright citizenship

The *ius soli* (Latin for law of the soil) is the right of anyone born in the territory of a state to nationality or citizenship. As an unconditional basis for citizenship, it is the predominant rule in the Americas, but is rare elsewhere. Almost all states in Europe, Asia, Africa, and Oceania grant citizenship at birth based upon the principle of *jus sanguinis* (right of blood), in which citizenship is inherited

²⁴ Trevisanut, Dr. Seline, *International Law and Practice: The Principle of Non-Refoulement And the De-Territorialization of Border Control at Sea*. Leiden Journal of International Law, September 2014 Raluca Miga Beșteliu, Drept internațional public, vol.1, ediția 3, Editura C.H. Beck, p.150.

²⁵ Legislative Decree no. 25/2008.

through parents not by birthplace. The United States of America, Canada and the Latin America applies the *ius soli* automatically and without any condition, while in Europe only 6 countries²⁶ apply the *ius soli*, but under some conditions.

In those countries, where states the *ius soli*, the executive branch of the government automatically recognizes these children as citizens upon birth, despite the foreign citizenship and illegal status of the parent. The same is true of children born to tourists and other aliens who are in a legal but temporary status.

Confronting the wave of immigrants that became very difficult to deal with, the Italian government proposed this type of citizenship to show more confidence to the immigrants, to make them feel integrated and appreciated. This is a form, the leaders said, to decrease the number of immigrants and the danger that they can represent for the State, referring to the terrorist acts that happened in France, Belgium, Germany of other attacks across Europe since 2016. On 6th of July 2017 the Italian government announced that will press on with the *ius soli* bill granting Italian citizenship to immigrant children born on Italian soil, who have spent at least five years in the Italian school system.²⁷

At the moment, in Italy states only the *ius sanguinis* for the babies born in Italy, and once reached the age of 18th, they can request the Italian citizenship, directly at the Civil status officer of the municipality of residence, if the parents had the legal residence in Italy at the time of birth and the children acquired the residence permit during all the childhood until the age of 18th.²⁸

The bill, now approaching a final reading in parliament, is stiffly opposed by rightwing and conservative parties who have tabled many amendments and by the people, especially through the social media, who afraid “a wave of new Italian people coming out of nowhere” and afraid by the fact that once the children will become Italian citizens, their parents will be authorized to stay in Italy for no special reason. The anti-migrant Northern League (LN) has come out against the bill, saying citizenship should be a reward for integration and not a prerequisite of it. The Italian Prime Minister, Paolo Gentiloni announced on 16th of July 2017 that the Senate maintains his point on applying the *ius soli*, but after the summer holidays, so they will come with news after September 2017.²⁹

²⁶ Greece, France, Portugal, Ireland, The United Kingdom and Finland.

²⁷ The newspaper „Il messaggero”.

²⁸ Article 4 of the Law 91/1992 regarding the new rules on citizenship: “*Lo straniero nato in Italia, che vi abbia risieduto legalmente senza interruzioni fino al raggiungimento della maggiore età, diviene cittadino se dichiara di voler acquistare la cittadinanza italiana entro un anno dalla suddetta data*”.

²⁹ http://www.ansa.it/sito/notizie/politica/2017/07/15/braccio-ferro-su-ius-soli-ma-slitta-mento-piu-probabile-_e35faf82-a19b-486d-a176-cb1a011ba7ed.html.

7. The law regarding the immigrants in Switzerland

The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (*AELE*)³⁰ says, regarding minors, that the dependent children or children aged under 21 of a person having a right of residence shall have the right to take up an economic activity whatever their nationality. The children of a national of a Contracting Party, whether he is pursuing or has pursued an economic activity in the territory of the other Contracting Party, shall be admitted to general education, apprenticeships and vocational training courses on the same basis as nationals of the host state, if those children are living in its territory.

The Federal Act on Foreign Nationals (*LEtr*)³¹ regulates the entry and exit, residence and family reunification of foreign nationals in Switzerland. By “foreign” they mean the non- European Union countries. If in the AELE the maximal age is 21, LEtr defines as family members of Swiss nationals or a person with a permanent residence permit as the unmarried children under 18, who live with that person. They are entitled to be granted a residence permit and to have their residence permit extended, while children under twelve are entitled to be granted a permanent residence permit.

The children of a Swiss national or of a person with a permanent residence permit or a residence permit (Art. 42-44) may work on a salaried or self-employed basis anywhere in Switzerland.

In the same time, the unmarried children under 18 of a person with a simple or short residence permit *may be* granted a residence permit if they live with the permit holder, if a suitable housing is available and if they do not depend on social assistance.

Regarding the children fostered with a view to adoption, they are entitled to receive a residence permit and to have their residence permit extended if their adoption is planned in Switzerland, if the requirements under civil law for the adoption of foster children are fulfilled and if their entry for the purpose the adoption was lawful. If the adoption falls through, the foster children are entitled to an extension of their residence permit and, five years after entry, they are entitled to be granted a permanent residence permit.

In fulfilling their tasks, the Confederation, cantons and communes shall take account of integration concerns. In this case, the authorities of the Confederation, cantons and communes, the social partners, the non-governmental organizations and the expatriate organizations cooperate.

In case of needed deportation, the competent authority shall ensure before the deportation of unaccompanied foreign minors that he or she will be returned in

³⁰ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=C_ELEX%3A2200_2A0430%2801%29.

³¹ <https://www.admin.ch/opc/en/classified-compilation/20020232/index.html>.

the State of return to a family member, a nominated guardian or reception facilities that guarantee the protection of the child.³²

If the enforcement of removal or expulsion is not possible, not permitted or not reasonable, the State Secretariat for Migration shall order temporary admission. Regarding the unmarried children under 18 years of temporarily admitted persons and temporarily admitted refugees, they may be reunited with the temporarily admitted persons or refugees at the earliest three years after the order for temporary admission and included in that order if they live with the temporarily admitted persons or refugees, if a suitable housing is available and if the family does not depend on social assistance. The competent cantonal authorities shall immediately appoint a representative for any unaccompanied minor foreign national to safeguard the minor's interests during the removal proceedings.

In Switzerland, the detention of children and young persons under 15 years of age is not permitted, but in the case of a detention order in respect of an unaccompanied minor seeking asylum, the representative under Article 64a paragraph 3bis of this Act or under Article 17 para. 3, asylum will be informed in advance. The needs of vulnerable persons, unaccompanied minors and families with minor children must be considered in the detention arrangements.

8. Case law unaccompanied minor

In a judgment of 8 June 2017³³, the Swiss Federal Administrative Court (TAF) had to interpret the Article 69 para. 4 of The Federal Act on Foreign Nationals (LEtr), which provides that before returning an unaccompanied minor alien, the authorities must ensure that it is handed over to a family member, guardian or host organization who can guarantee his protection. This Act is “Euro-compatible” since it essentially incorporates Article 10 para. 2 of Directive 2008/115 of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third- country nationals.

The case concerned an unaccompanied minor, originally from Guinea, who had been refused refugee status following a decision by the Secretariat of State for Migration (SEM).

As his request was rejected, a referral to Guinea had been ordered. The SEM had justified his refusal and his return to Guinea because the minor concerned had previously lived in his parents' home with his brothers and sisters and therefore his family could collect it. Moreover, the SEM had found that although no family member was able to collect and care for him, there was an appropriate structure in Guinea that would have agreed to take care of the minor.

³² Art. 69 No 4 inserted by Art. 2 No 1 of the Federal Decree of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC), in force since 1 Jan. 2011.

³³ Case - E-4306/2016 - <http://www.bvger.ch/publiws/pub/cache.jsf>.

By a strict interpretation of Article 69 para. 4 The TAF stressed that this provision must be interpreted as the minor must be effectively taken in charge by a member of his family or an institution, in “real and practical conditions” and not just by simple expectations.

According to TAF the SEM didn’t examine properly the situation of the minor to admit a case of care by the family structure. As for the reception structure operating in Guinea, the TAF noted that although the SEM had exchanged various e-mails with an NGO to decide on the care of the minor, these exchanges remained general and did not establish in an effective and concrete manner that the institution expressly agreed to take over the minor. Moreover, it also observed that the institution in question had attached conditions to the taking over of the minor.

The TAF concluded that the actual and concrete conditions for the care of the minor in his country of origin, both in terms of family and institution, did not satisfy the legal requirements laid down in Article 69 al. 4 LEtr, so the minor could not be sent back to Guinea.

9. The Syrian war and the “wave of refugees” since 2015

The Charter of Fundamental Rights of the European Union³⁴ guarantees the protection of rights of the child by the institutions, as well as by the member state when they implement European Union law.

Children have represented up to a third of migrant arrivals in the European Union (EU) since the summer of 2015. Upon arrival, they need and have a right to protection, in line with EU and international law.

The respect for the right to life comes with the obligation of every State to ensure to the maximum extent possible the survival of the child. The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families³⁵ applies to the entire migration process, from preparation for migration, departure and transit to the total period of stay in the new State.

The number of new Syrian applications for asylum has increased by 600% since 2012 in EU. This numbers don’t include other forms of migration. There is no current official statistic on Eurostat showing how many Syrians have entered EU as a Third Country National (TCN) and how many have legal stay in a European country.

Third Country National Syrians are mostly family members that migrate from Syria with their family to the country of origin of their spouse. Children originating from these mixed families usually have double or multiple citizenship. Although the children have European citizenship they only speak Arabic so they find it difficult or impossible to integrate in a European society. Furthermore, all

³⁴ Proclaimed in 2000, the Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

³⁵ Adopted by General Assembly resolution 45/158 of 18 December 1990.

programs aiding refugees or TCNs are fully destined for people that do not have European citizenship, even if they also have the citizenship of a country outside EU or Schengen area. At a national level, there aren't any programmers specifically destined for the children of a mixed family (TCN with a European citizen). This situation has generated social exclusion and marginalization of Syrian children originating from mixed families.³⁶

10. Child Status Protection Act (CSPA)³⁷

In the United States of America, The Child Status Protection Act (CSPA) from 2002 amended the Immigration Nationality Act (INA) by changing who qualifies as a child for purposes of immigrant. This permits certain beneficiaries to retain classification as a "child," even if he or she has reached the age of 21. This act concerns the person who asked the permanent residence permit during the minor age (before 21 years old), but the procedure was so long that couldn't be finalized in time. This situation is described as "aging out". CSPA can protect "child" status for family-based immigrants, employment-based immigrants, and some humanitarian program immigrants.

Conclusion

The Status of the Minor Immigrant in the International and the European Union Law can be different from country to country, depends from where they come and where they go, depends of the conditions of each country, if it is a democratic country, a communist one or one confronting the war.

Minors can depend on their parents' conditions of staying in the host country or can be unaccompanied minors, skipping the war or famine or any bad condition.

The legislation changes very often, in order to correspond to the reality and with the flow of immigrants.

Each State has its own law and legal system, but they are bound by European Union and/or international law, in order to insure the respect of the principle of the best interests of the child.

During the 6th edition of the International Conference "The efficiency of legal norm – National and International Legal Norms Regarding Children", held at the "Dimitrie Cantemir" University, Cluj-Napoca, Romania, I had the opportunity to listen many opinions and learn many interesting facts about Children's' rights in different countries.

The speech that intrigued me the most was the one of Mrs. Mariana Ianachevici and Mrs. Maria Orlov, about the "Ensuring the Right of Moldovan Children to be raised and educated in the family: legislative and practical issue".

³⁶ *Ibidem*, p. 42.

³⁷ [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives %201998-2008/2008/cspa_30apr08.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/cspa_30apr08.pdf).

This inspired me to write about the minor immigrants, as myself I am one of them. I was surprised by the way the authorities see the situation of the children left in the country with, generally, the grandparents, while the parents leave to work abroad. From a legal point of view, in Romania, this situation is stipulated in the Law 272/2004 on the protection and promotion of the rights of the child, but before that that, when happened the biggest wave of immigration of Romanians abroad, this law was not in force.

Most of the children were left with their grandparents, with the hope of a better life and even if at that time the means of communication were very limited, at maybe a phone call per month, they were living with the idea that the separation was a worthy cause and was replaced with many presents and travelling abroad during school holidays.

Of course, each family has his way of treating this problem but most of them immigrate for the same reason: a better economic situation and the facts were very different before 2007, when Romania became a Member State of the European Union, because it was way more difficult to leave the country but easier to get a job in most developed countries.

When everything was depending on Visa, on the long way to come by car and the very expensive flight tickets, the perception of the separation and the sacrifice was much more important and with a very specific scope and the children were educated to understand exactly the meaning of it.

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