

RESPECT FOR AND PROMOTION OF IMMIGRANTS' RIGHTS

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Abstract

Europe is in the midst of a "crisis" resulting from the conflicts in Iraq, Afghanistan and Syria, migration trials in North Africa due to economic insecurity, as well as generalized violence and human rights violations. This crisis should not only be seen as a security hazard but also as an opportunity to reaffirm the intensity and strength of the human dimension as well as to find lasting solutions in order to restore the balance, security and rights of the individual. Respect for human dignity and human rights is not an option for anyone but an obligation. We appreciate that the analysis of immigration rights in the light of applicable legislation in all areas is necessary in the current context. We have proposed that in our study we refer to the protection of immigrants' rights in Romania through the law in the field of civil law.

Keywords: *migration, human rights, human dignity, civil law*

JEL Classification [37, 38]

1. Introduction

In ancient times the ancestors of the Romanians lived on the territory of Dacia, speaking a Roman language. Being a rich Roman province, Dacia represented both economic and military strategic interest for the Roman Empire.

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.

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 Pechenegs (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

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based in the towns of Curtea de Argeș in the Wallachian Carpathians and Rădăuți in northern Moldavia. All these 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. All this history conferred to the Romanian people a high-level of tolerance for minorities and respect for their cultural identity.

Throughout its history Romania has been constantly struggling to keep its freedom and identity trying to maintain its own balance between the great powers of the Ottoman Empire, the Austro-Hungarian Empire and Russia.

In the Romanian 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.

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, 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 totalitarianism system also caused many Romanians to emigrate after the fall of the Communist regime in Romania.

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

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.

2. Immigration in the context of respecting and promoting human rights

Romania expects an increase in the number of immigrants in the coming years, especially after it joins the Schengen Convention.

In the last years, Romania became a transit and immigration country.

Thus, we consider it is necessary to analyze the issue of immigration in the context of respecting and promoting human rights.

In the Universal Declaration of Human Rights, which marks this year the 70th anniversary of its adoption, the second article, on the exercise by all human beings of the rights proclaimed in the document, states that "it will not be done no distinction according to the political, legal or international status of the country or territory of a person, whether that country or territory is independent, under guardianship, non-autonomous, or subjected to any other limitation of sovereignty "Thus, no distinction is allowed in with regard to the criteria outlined above.

International human rights standards directly create rights for individuals, and they become holders of rights directly under international legal norms and can claim these rights before domestic and international bodies. Thus, the existence of these rules imposes certain requirements on states and legitimizes individual complaints when these rights have not been respected.

Every human being, hence the immigrant, is subject to inalienable rights and freedoms, and a democratic society requires respect for the universality of human rights and not the division of rights according to the status of immigrant or resident (De Frouville, et al., 2018).

One of the principles underlying the European Union is respect for fundamental rights and freedoms, a principle that derives from democracy and the rule of law. Full respect for fundamental rights is based on more in-depth knowledge and awareness-raising on fundamental rights issues in the Union.

Based on the provisions of international¹, regional² and national³ documents that protect all individuals against discrimination based, inter alia, on ethnic or national origin, religion, race and color, each person is allowed to have a place in society.

It is therefore unanimously admitted that migrants must enjoy fundamental rights and it is indisputable that a person may be suppressed to exercise the rights, irrespective of his or her status, as a citizen or non-citizen, and to limit the exercise of more than the law makes in certain specific cases, is forbidden. However, there is a gap between the rights that immigrants enjoy in accordance with internationally agreed principles and the reality of

¹ The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, etc.

² Migration to and within Europe is governed by a combination of national law, European Union law, the European Convention on Human Rights, the European Social Charter and other international obligations assumed by the European states.

³ Government Emergency Ordinance no. 194/2002 on the regime of aliens in Romania., Government Ordinance no. 25/2014 regarding the employment and detachment of foreigners on the territory of Romania and for the modification and completion of some normative acts regarding the aliens regime in Romania, Law no. 122/2006 on asylum in Romania.

individual life in the countries in which they migrate. This gap, as well as the asperities encountered, highlights the vulnerability of migrants in the protection and promotion of human rights.

In Europe, fundamental rights and freedoms have proclaimed themselves progressively, but in such a vigorous way that their importance is now considerable, and their influence, beyond the bounds of Europe, is undeniable (Renucci, 2009, p. 4) Even more so, if we are talking about the European Union, we find that it is trying through its actions and policies to promote respect for human rights and equality between people and to combat all kinds of discrimination. We recall that the application of the principle of equality at international level implies, *inter alia*, the absence of a privileged status or domination of one Member State over the others (Besteliu & Brumar, 2009, p. 7).

By the Maastricht Treaty of 1992, the European Union was to open up numerous action fields. According to Article 2 of the Treaty, "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. "

No state can ignore the obligations it has to respect and protect human rights, the rights it enjoys and immigrants, along with the native population.

The responsibility to protect human rights lies primarily with the existence of the states themselves. However, in some cases, fundamental human rights are being violated. Their observance is imperative for all human beings in order to achieve the living conditions indispensable to the development of individuals.

If we refer to immigrants, we find that, irrespective of their legal status, they have fundamental rights whose observance is the expression of democracy and the rule of law.

In general, immigrants are the bearers of a culture different from that of host states, which is why different ways of living conflict with that of citizens in receiving countries, without taking into account the legitimate aspirations of newcomers.

The alien, regardless of his status, dissolves in the host country society, and non-discrimination is the fundamental pillar of his adaptation. However, leaving the territory of the state of origin and looking for individual liberty or a better economic situation, the alien retains some characteristics specific to the society in which he previously lived, while taking on the particularities of the receiving state.

Non-discrimination implies the evaluation and appreciation of all individuals, providing equal access and opportunity for development by eliminating all barriers to engagement in society. All members of society, citizens or foreigners, should be able to use the same facilities, take part in the

same activities and enjoy the same experiences, all the more so since "respect for human rights can not coexist with poverty, discrimination in society and in the workplace, with the lack of housing, social security and healthcare (Zlătescu, 2011, p. 8). In this respect, human rights and the way they are exercised are fundamental to overcoming barriers and promoting human beings.

Migration is a phenomenon that can take place in dignity and is not only an attempt to survive. The vulnerability resulting from the status of the immigrant who is sometimes excluded from the exercise of fundamental rights is in contrast to the necessary adaptation for the migration process itself.

Many aspects of human rights violations affecting immigrants are rooted in discrimination, unequal treatment and unequal opportunities, prejudices, stereotyping as well as racism.

In some cases, migrants can access rights through legal provisions, but they can not exercise them either through lack of knowledge, lack of interest or other non-legal factors. Although the provisions of the legal norms against discrimination are well articulated in accordance with various concepts of equality, the tensions that undermine this principle are present. Thus, there is circumstantial evidence of discrimination that offers the opportunity to rethink and restore the objectives of the law, building a more coherent world in which the human being is at the forefront. The main challenge in the future is to identify ways of generating a change in general behavior to reduce the discrimination of aliens.

An important role in the European Union is played by the Union's Fundamental Rights Agency. It helps to protect the fundamental rights of people living in the European area. One of the thematic areas of the FRA is asylum, immigration and integration of immigrants.⁴ The Agency works in close collaboration with other institutions and bodies operating both nationally and internationally and develops effective cooperation with the Council of Europe and civil society, for example by creating a Platform on Fundamental Rights.

The FRA cooperates closely with the Member States, which each designate national liaison officers and governmental organizations and competent public bodies in the Member States of the Union, including national human rights institutions and civil society, to this end, human rights platform ', a network of cooperation for the exchange of information and knowledge (Zlătescu, 2017).

⁴ The other thematic areas are racism, xenophobia and the lack of tolerance associated with them, discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation or persons belonging to minorities, and any combination of these grounds (discrimination multiple); child protection, including child protection; visas and border control; the participation of Union citizens in the democratic functioning of the Union; the information society and, in particular, respect for privacy and the protection of personal data; access to effective and independent justice.

Given the current crisis in European society by the wave of immigrants, it is obvious that economic and social rights are crucial to improving living conditions and promoting well-being. Among these, we mention the right to work, social security, the right to health, the right to education, the right to social protection and care, the right of migrant workers and their families to protection and assistance.

Immigrants must be able to play an active role in society, such as education, training, access to the labor market, good knowledge of the host state's language, in order to be effectively integrated into host countries.

Living and welfare are two concepts that interfere with and mutually interrelate. The concept of well-being implies a decent standard of living, both at the individual and society level.

Indeed, for inclusion to be successful, there is a need for openness from indigenous society, which is a vital condition for avoiding marginalization.

Together with other treaties of the European Union, (Zlătescu & Marinică, 2017, pp. 87-150) the Charter of Fundamental Rights of the Union guarantees in Article 15, paragraph 1, the right to employment and to pursue a freely chosen and accepted professional activity.

The European Convention on Human Rights provides only a part of the economic and social rights, most of the rights being enshrined by reference to civil and political rights. Only prohibition of slavery and forced labor, as well as the right to set up unions, are exposed and guaranteed.

Romania, which for centuries has been a state of emigration, today a specific objective for Romania is the facilitation of the access to the territory of the state of third-party citizens who meet the needs of employment (creating the legal framework for attracting and maintaining the right labor force identified needs).⁵

As is well known, access to many rights depends on the regular or resident status of a person in the host state. The EU is determined to eliminate the arrival and presence of unauthorized economic migrants. The main measure is the Directive on sanctions against employers (Directive 2009/52 / EC): it prohibits the employment of irregular migrants from outside the EU by sanctioning employers with fines or, in the most serious cases, even with criminal sanctions.

As regards citizens of the European Union, the European Economic Area and their family members, they have the right to reside for a period of up to three months from the date of their entry into the country without any additional conditions. By way of exception, citizens of the European Union who enter Romania and are looking for a job have the right of residence for up to 6 months from the date of entry, without any additional conditions. They also have to prove that they are really looking for a job and that they have a real chance to find one.

⁵ See the NATIONAL IMMIGRATION STRATEGY for the period (2015-2018).

For the work done under the individual employment contract, each employee is entitled to a salary. Any discrimination on the grounds of sex, sexual orientation, genetic characteristics, age, nationality, race, color, ethnicity, religion, political option, social origin, disability, family status or responsibility, membership or activity shall be prohibited in determining and awarding the salary union.

The presence of a large number of illegal residents has a negative influence both on the labor market, working without legal forms, and on the process of integration and social cohesion, being excluded from full participation in society, both in terms of contribution and through benefit.⁶

The possibility is high enough for immigrants to face the risks of trafficking in human beings and forced labor, to be constrained by various conditions to work illegally or to be discriminated when they are looking for a job or even when they are employees. Employers' state-imposed exigencies are of overwhelming importance for immigrants' lives.

Work on the black is present among foreigners, the socio-economic conditions and insufficient assistance causing immigrants to perform undeclared work.

Aliens whose free access to the labor market in Romania is established by treaties concluded by Romania with other states; foreigners holding the right of temporary residence for family reunification as family members of a Romanian citizen; foreigners who have the right of temporary residence for studies, foreigners who have acquired a form of protection in Romania, asylum seekers from the date when they have the right to access the labor market according to the Law no. 122/2006 on asylum in Romania, with subsequent amendments and completions, if they are still in the procedure for determining a form of protection⁷, they do not need a vacancy notice.

The procedure for recognizing qualifications for immigrants is necessary for the exercise of the right to practice a profession in the territory of Romania, obtained in a third country. The process involves assessing the level of qualification conferred by the diploma and the professional experience of the alien.⁸

As far as the right to housing is concerned, it is regulated through international instruments.⁹ Among the countries of the European Union that

⁶ The Council Directive 2003/9/EC of 27 January, laying down minimum standards for the reception of asylum seekers

⁷ See Government Ordinance no. 25 of August 26, (2014) (* updated *) regarding the employment and detachment of foreigners on the territory of Romania and for the modification and completion of some normative acts regarding the regime of aliens in Romania, CAP. II Employment of foreigners on Romanian territory, art. 3, paragraph 2.

⁸ <http://www.cnred.edu.ro/#Recunoastere-calificari-profesionale>.

⁹ The International Covenant on Economic, Social and Cultural Rights states in Article 11 that "the right of every person to a standard of living sufficient for himself and for his family,

have passed the Constitution the right to housing, we mention Belgium and Finland.¹⁰

In order to ensure adequate housing for immigrants, urgent action is needed to ensure equal treatment through special programs for immigrants. Despite the sustained efforts, improving the housing situation is quite difficult, states are facing financial difficulties.¹¹

In terms of access to housing, it may acquire certain features, depending on the status of the aliens. Thus, for foreign students there is the possibility of accommodation at home, and foreigners with permanent residence have access to social housing.

The local public administration authorities are obliged to ensure, within the available resources, social housing for persons who have acquired a form of protection in Romania and are about to move to the respective community under the same conditions as the Romanian citizens.

In accordance with the European Convention on Human Rights, Article 2 of Protocol no. 1 provides for the right to education, and Article 14 and Protocol no. 12 prohibit discrimination on grounds of national origin. Article 2 of Protocol no. 1 guarantees, in principle, the right to primary and secondary education.

Article 14 (1) of the EU Charter of Fundamental Rights states that "everyone has the right to education, as well as to access to vocational training

including sufficient food, clothing and housing, and the continuous improvement of his conditions "Other international instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on Refugees refer to the right to housing, although none of them explicitly guarantees a right to housing.

According to the Convention, there is no right to acquire a dwelling, but only a right to respect for a dwelling. However, in an evolved society, it is natural for all its members to have an adequate living space.

¹⁰ See Belgian Constitution, Title II - Belgians and their rights, Article 23, Constitution of Finland, Section 19 - Right to social protection.

¹¹ The International Convention on the Protection of All Migrant Workers and their Families, December 18, (1990), states in the Preamble that "human problems in migration are even more serious in the case of irregular migration" and stresses the need to encourage appropriate action "to prevent and eliminate clandestine movements and trafficking in migrant workers, while ensuring the protection of their fundamental rights".

The Committee on Economic, Social and Cultural Rights stated that "social security, through its redistributive character, plays an important role in reducing poverty and preventing social exclusion and promoting social inclusion".

In terms of meeting the health needs of immigrants, this is a challenge for health care services. The unequal variation in the use and accessibility of health care services for migrants is a concern for both healthcare providers and decision-makers.

Education is an important aspect of effective integration, children's right to education is one of the "core values of democratic societies that form the Council of Europe."

It is important for immigrants, both legal and illegal, to be educated so that they can later participate in the country's evolution and play a role in society becoming a taxpayer who complies with the law.

and continuous training". Also, the second paragraph of this article regulates the "possibility" of attending compulsory education free of charge. Free access is an "extremely important guarantee for equal, non-discriminatory access to education"(Zlătescu, 2014, p. 7).

Conclusions

The extent of immigration was mainly determined by the fundamental changes in the countries of origin. For receiving countries, immigration has implications for the economy, social services, housing, education. For immigrants, the violation of fundamental rights implies the situation of pushing them to the periphery of society.

Action on the exercise of economic and social rights by immigrants should be on two levels: internationally and nationally, only in this way will effective management of existing phenomena be achieved.

In order for rights to be enforced, governments must, based on an efficient algorithm, adopt a set of concrete measures. Thus, it assumes the obligation to provide all individuals with the opportunity to enjoy these rights, but also offers remedies when these rights are limited or violated.

In any rule of law, respect for fundamental rights must be respected, and the lack of guarantee would lead the man out of the society he is part of.

For a development and development of humanity, at a time of social transformation, it is necessary to intensify the struggle to respect the fundamental rights of any human being.

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