

## CURRENT CHALLENGES OF MIGRATION ON NATIONAL AND EUROPEAN LEVEL

Adrian BULGARU\*

### ABSTRACT

*Europe has faced many challenges, having to manage many difficult situations: the economic crisis in Greece, the security issues in Ukraine and the conflict with Russia, the global threat of terrorism, culminating with the humanitarian crisis of refugees and migration. The European Union passes through one of its most tense and difficult periods, but has the ability to act as a global player to find long-term solutions, which can help to solve these crises, to provide adequate answers to the problems it confronts. All Member States should address the issue of migration and refugees, bearing in mind first of all in their cooperation, the values that unite us, not the differences of opinions.*

*Key-words: migration, refugees, international protection, human rights, solidarity, security.*

In recent years Europe has experienced many challenges and manageable situations, such as: the economic crisis in Greece, the security problems in Ukraine and the conflict with Russia, the threat of global terrorism - bombings in France, Belgium, Germany, the humanitarian crisis of refugees and migration, UK is making use of the clause allowing for voluntary withdrawal from the European Union (BREXIT). All these problems can be a consequences of globalization, a world where disparities persist and have repercussions both in the social sphere and in the political and economic one. Walls, physical barriers, were created, borders were closed, facts that induced problems in addition to the existing ones which had the effect of direct violation of several international treaties. Based on the principles of democracy, protection of the fundamental rights and freedoms, the European Union wanted to show solidarity and took an approach considered by some "totally inappropriate" offering a very large number of people the chance to enter the European Union area, which, taking into account the very difficult process of identifying those persons who had no documents to prove their identity, created numerous problems that the EU found hard to manage.

Under these circumstances, we can say that the European Union is facing one of its most tense and difficult period, characterized by a clear need to strengthen security and identify appropriate solutions to achieve a secure environment for the

---

\* Ph.d., Director, Romanian Institute for Human Rights.

European citizens and the non-European residents of the Union. But it does have the ability to act as a global player for finding long-term solutions to solve these crises, to provide adequate answers to the problems they face. Regarding the management of migration and the refugee problem it must be done in all Member States, cooperation should be carried out based on values and not differences of opinion between states. It requires balance and solidarity in order to find and implement the best solutions both in terms of managing the flow of persons seeking international protection, especially to support those who really need protection of the Union, taking into account the fact that among those who entered Europe many are economic migrants, seeking a better life.

People migrate for different reasons, people who migrate are not easy to classify.<sup>1</sup> In general, migrants are people who move from the country where they are resident or whose nationality they have to another country. Migrants can move for economic or educational reasons or to escape persecution, abuses against their fundamental rights as a result of threats to life or mental integrity, or due to a state of conflict/war. A migrant can leave the country due to persecution for reasons of race, for example, or because of poverty.<sup>2</sup> In the first case, he/she may be entitled to apply for refugee status, while the second case will be considered a case of migration for economic reasons, which does not entitle the person to seek international protection, even though the threat to the individual is like can be as important as in the first case. A large number of categories of migrants, sometimes overlapping can be identified: common migrants entering the country after obtaining a permit from the State, temporary or not; migrants without documents<sup>3</sup> who enter a country illegally without possessing proper legal documents<sup>4</sup> or migrants who entered the country legally but have expired documents and remained in that country under these conditions; asylum seekers, migrants who have entered a country legally or illegally, to escape persecution in their country of origin, as defined in the Geneva Convention, Article 1A; other migrants who need protection a category that includes several types of migrants whose status is not clearly defined but in need of international protection. We include in this category

---

<sup>1</sup> See Gabriela Rodriguez Pizarro, *United Nations Special Rapporteur on the rights of migrants*, Annual Report, 2004, par. 4.

<sup>2</sup> See Adrian Bulgaru, *Standarde și măsuri la nivel național și european privind protecția internațională în materia azilului*, Pro Universitaria, 2013, p. 23 et seq. See also Victor Dan Zlătescu, Irina Moroianu Zlătescu, *Refugiații și statutul lor juridic*, IRDO, Bucharest, 1992.

<sup>3</sup> United Nations General Assembly Resolution 3449 (XXX) measurable guarantee human rights and dignity for all migrant workers, from December 9, 2009 uses the term "undocumented or irregular migrant" at the expense of "illegal migrant". The term "irregular" does not express the quality of the person, if migrant our quality, but rather make reference to his situation on staying or leaving the territory.

<sup>4</sup> Correspond to the status of illegal migrant two categories: migrants hiding to avoid being detected by the authorities and those whose presence is well known but for reasons relating to their protection can not be returned.

stateless persons, victims of trafficking, unaccompanied children whose status is not clearly defined, asylum seekers who were granted a form of protection and undocumented migrants - all these categories of persons can not be expelled because of the principle of "non-refoulement". A migrant can belong to a category or multiple categories simultaneously. Also, a migrant may move from one category to another during the period of migration or may be reclassified from one category to another for instance, when an economic migrant submits an application for asylum in hope of obtaining privileges associated with the refugee status. The migrant status is not stable, as reflected in other situations, for instance, an economic migrant can become a refugee in the country of destination or a refugee may lose his status and become undocumented migrant if the circumstances that led to fear of persecution and cease to exist in the country of origin. Common migrant can become undocumented migrant if the documents that allow him stay in the receiving country expire.<sup>5</sup>

As previously mentioned the recent waves of people who broke into the EU were not motivated only by reasons of persecution, but also economic ones. The doctrine and international jurisprudence accept the idea that the notion of persecution must be interpreted in correlation with Article 33 of the Geneva Convention which sets the prohibition of refoulement.<sup>6</sup> Unlike persons seeking international protection, economic migrants are not subject to imminent risk threatening to their life or putting them in danger if they return home.

Persons seeking international protection have to go through the asylum procedure, following which the state where they applied for asylum will decide whether or not to grant the refugee status or other protection.

Regarding people who have penetrated in various ways in to the Member States of the European Union, the term that I would use is that of migrants, only some of them eventually receiving the refugee status.

Considering the discussion above, we wish to point out that the term refugee as defined by the Geneva Convention of 1951 "means a person who has been conferred international protection following well-founded fear of persecution on grounds of race, religion, nationality, membership of a particular social group or because of his political views"<sup>7</sup>.

The issue of refugees, of the migrant labour, of anyone who, for political, economical or even religious reasons, seeks refuge on the territory of another state, are questioning human rights at the highest level.<sup>8</sup>

---

<sup>5</sup> See Adrian Bulgaru, *Standarde și măsuri ... op. cit.*, p.26.

<sup>6</sup> See Madalina Cocosatu, *Drept internațional public*, Pro Universitaria, 2012, p. 126 et seq.

<sup>7</sup> Handbook on procedures and criteria for determining refugee status under the 1951 Geneva Convention and the 1967 Protocol respect the status refugiaților Office United Nations High Commissioner for Refugees, Geneva 1992, p.4 et seq.

<sup>8</sup> See Irina Moroianu Zlătescu, *Human Rights. A dynamic and evolving process*, Pro Universitaria, 2015, p. 320 et seq.

Human rights are rights to which all persons, without exception, are entitled. Individuals can not acquire these rights only because they represent a particular category, be they citizens, workers or other status. The Universal Declaration of Human Rights, the founding document of Human Rights states that “all human beings are born free and equal in dignity and rights”<sup>9</sup>.

Europe has received and still does so, in a very short time, a large number of citizens belonging to another culture and another religion, most of them not being able to speak the host country’s language. In this respect, migration management had to be a shared responsibility, not only between EU Member States, but also for non-EU countries of transit and origin of migrants.<sup>10</sup>

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. In recent years, the number of those people arriving in Europe increased.<sup>11</sup>

Greece was the first state in the Union which has experienced large number of migrants, Serbia, Croatia and Hungary due to exceptional circumstances have closed their borders suffering losses of millions as a result of those decisions.<sup>12</sup> Blocked highways, suspended freight street incidents. The first to have closed its borders was Hungary, which has led the refugee to reach Western European countries transiting Serbia and Croatia later. One of the most contested decision was that of building a barbed wire fence along the 175 km border with Serbia. It was extended along the border with Croatia and the Hungarian authorities have taken the necessary steps to build a portion of the fence on the border with Romania as well necessary.

The large number of people who applied for protection prompted the European Commission to make proposals for the allocation of quota, which although based on negotiation, determination, consistency and solidarity, lack realism and pragmatism. The European Union is based on a series of Principles that have played an important role in its evolution and extension; based on these Principles, the solution to migration must come only from a common approach of the Member States that requires determination, consistency, bargaining, solidarity, realism, pragmatism and vision.

Regarding Romania's position in the current context, first we must stress that most of those who wanted to reach the Union’s territory expressed from the

---

<sup>9</sup> See Universal Declaration of Human Rights, see also Adrian Bulgaru, *Migration, asylum and human rights law* in *Revue européenne du droit social*, No. 4/2014.

<sup>10</sup> See Adrian Bulgaru, *Temporary protection as an exceptional measure for an influx of people seeking international protection*, *Fiat Iustitia, Review of Juridical Studies*, nr. 2/2015, p. 47.

<sup>11</sup> See Irina Moroianu Zlătescu, *Migration and law*, IRDO, 2014, p. 11 et seq.

<sup>12</sup> Statistically determined that Croatia was throughput of approximately 5,600 refugees a day, 50,000 a week, the population of this country is about 4 million citizens. Regarding Hungary more than 150 000 refugees have transited the country in just 8 months.

beginning their desire to reach Germany or other states in Western Europe, our country not being one of their targets. Although there were voices opposing the transfer of large amounts of people seeking international protection from Greece and Italy to Romania, it can not be said that they were the expression of lack of solidarity, but rather a fear based on the fact that our country had never faced such problems and had not been put in a position to handle a large number of people seeking protection. It is indeed a reality that must be taken into account when discussing the issue of hosting large numbers of refugees. Romania lacks currently the infrastructure or the resources to receive a number of migrant higher than that already undertaken. The most difficult to implement is the integration of beneficiaries of a form of protection from the Romanian state. To achieve integration the law refers on the one hand to access to a range of social and economic rights such as the right to employment, to housing, right to education, right to health care and social assistance, and, on the other hand the implementation of integration programs (specific cultural orientation activities, counseling and learning the local language). Even if the integration process would mean considerable effort, "exceeding the capacity of places for granting asylum can not be a reason for not granting asylum. States must use democratic practices for asylum seekers who have come in their territory".<sup>13</sup>

However, we must not forget that Romania as a member state of the European Union must comply with decisions taken at European level based on the European treaties and I believe that our country's position should be one of solidarity, support and cooperation with the other EU countries in what is currently a great challenge for the EU while ordinary citizens can respond with empathy and solidarity to the need to leave the path of war and persecution. Our country participated in all forms of cooperation in migration, even before the accession date; as a full member state, Romania implements effective policies and measures adopted at EU level.

Regarding the role of the EU as a global actor it should be pointed out that there has been an increased reaction against the Roma population lately, against citizens from poorer countries who went to work in the West, against asylum seekers. Even in Germany there has been increased violence against asylum seekers. It is an issue to be considered taking into account the recent events that took place in Nice and Berlin. In this respect the European Union might not be ready for a return xenophobia. Recent events have brought to light things that were not desirable, namely that European citizens, born, raised and educated here, have been radicalized, coming to commit terrorist acts or join terrorist groups.

Also it was found that hundreds of thousands of people who have crossed borders illegally when they interacted with the authorities of European countries

---

<sup>13</sup> See Gheorghe Iancu, Vlad Alexandru Iancu, *Dreptul de azil. Privire comparativă cu statutul juridic al refugiatului*, Universul Juridic, 2015, p. 82 et seq.

have reacted angrily, refusing registration and fingerprinting, as required by the EU procedures. These people come from conflict zones, where state authorities practically no longer exist or completely lost control, areas dominated by terrorist groups that formally declared that European citizens are a target. Unfortunately, the authorities of European countries with an extremely high percentage of migrants have repeatedly proven unable to protect their own citizens.

Another aspect that I would like to mention is that of the refugee camps that I personally think to be a temporary solution, and not in any way, an answer to the basic problem, which generates these huge population movements.

If we talk about refugees and not economic migration, the vast majority of those whom shortcomings and war forced to flee to other countries want to return home. They are deeply attached to the place where they were born and do not want another country or a refugee camp to provide better conditions. They want peace in their country, they want a school for their children, a hospital for the needy, infrastructure development, jobs and real prospects for the younger generation.

Although the refugee problem has become a priority for the European Union, which has assumed the responsibility to protect and assist refugees on humanitarian grounds, the problems the EU states are facing most often make it necessary to redefine the actions and to adapt to the new situations arising.