

Section III: CITIZENSHIP AND IMMIGRATION IN EUROPE

IMMIGRANTS IN SEARCH OF DEMOCRACY AND HUMAN RIGHTS

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ABSTRACT

The author of this articles analyses the main legal norms that should be taken in consideration regarding the minor immigrants and the vulnerable people among immigrants. The author will present the main international, European and national norms and will make a comparison between them to understand the differences and the most favorable and the hardest regulation.

Keywords: *Public Law, International and European Law, immigration, minors, vulnerable.*

Introduction

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, in search of new economic opportunities and horizons, to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses or to escape the effects of climate change, natural disasters or a combination of these reasons².

The democracy represents a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system where people's human rights and fundamental freedoms are respected, promoted and fulfilled, allowing them to live with dignity.

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² The New York Declaration for Refugees and Migrants, The Resolution adopted by the UN General Assembly on 19 September 2016, available on http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1.

It is an universally recognized ideal and one of the core values and principles of the United Nations, regulated by the Universal Declaration of Human Rights and by the International Covenant on Civil and Political Rights³.

The Human Rights are norms that help to protect all people everywhere from severe political, legal, and social abuses⁴.

The vulnerable persons are defined by the Romanian General Inspectorate for Immigration⁵ and by the Directive 2013/33/EU as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation⁶.

The “unaccompanied minors”⁷ is defined as the „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”.

International law

The 2030 Agenda for Sustainable Development⁸ recognized the positive contribution of migrants for inclusive growth and sustainable development, for the development of countries of origin, transit and destination and the Member States engaged to cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons.

During the New York Declaration for Refugees and Migrants were reaffirmed the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights regarding the protection of the human rights of all refugees and migrants, regardless of status, respecting the international law and international human rights law, the international refugee law and international humanitarian law. The signatories of the declaration have pledged to give a special importance to the vulnerabilities of women and children during the journey from

³ <http://www.un.org/en/sections/issues-depth/democracy/index.html>.

⁴ <https://plato.stanford.edu/entries/rights-human/>.

⁵ <http://igi.mai.gov.ro/en/content/vulnerable-0>.

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, available on <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML>.

⁸ United Nations Resolution adopted by the General Assembly on 25 September 2015, available on http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

country of origin to country of arrival, to protect them from the potential exposure to discrimination and exploitation, to sexual, physical and psychological abuse, violence, human trafficking and slavery. The States should take steps to reduce stigma, discrimination and violence, to review policies related to restrictions on entry based on health status, with a view to eliminating such restrictions and the return of people suffering of certain diseases, to support their access to a treatment, care and support.

The Declaration also recommended to take into consideration the diverse needs, vulnerabilities and capacities of women, girls, boys and men, to protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration to the best interests of the child, specially to the unaccompanied children and those separated from their families, according to the Convention on the Rights of the Child.

The external migration policy regarding the result of the New York Declaration will be analyzed at the EISA 12th Pan-European Conference on International Relations that will be held in Prague, between 12 and 15 September 2018⁹.

On 30th August 2008 Italy and Libya signed in Bengasi the Treaty of Friendship, Partnership and Cooperation¹⁰ to combat the illegal immigration, human trafficking and contraband and to reinforce the border security. On 2nd February 2017 Italy signed a Memorandum with the Libyan Government through which commits to providing equipment and military, strategic and technological support to stop the migration flow from Africa to Europe. Unfortunately, in August 2017 CNN published a video showing some African migrants being sold as slaves in Libya¹¹ and after more investigations, the international and European authorities found that people are forced to stop in a detention center governed by the Department for the fight against illegal immigration, in inhuman condition, especially children and pregnant women that are beaten, tortured and raped¹². This facts started several manifestations¹³ across the world by people asking the European Union Commission to stop financing the Libyan Coast. Even the President of France, Emmanuel Macron defined those actions as crimes against humanity and in November 2017 called an emergency meeting of the UN Security Council.

Thanks to an agreement between Italy, Libya, the Organization of the United Nations and the Episcopal Conference of Italy¹⁴, on 22nd December 2017 a group of

⁹ <https://www.imiscoe.org/news/news-from-members/774-cfp-the-diplomacy-of-migration-analysing-external-migration-policies>.

¹⁰ http://www.camera.it/_dati/leg16/lavori/schedela/apritelecomando_wai.asp?codice=16pdl0017390.

¹¹ <https://www.youtube.com/watch?v=2S2qtGisT34>.

¹² <https://www.avvenire.it/attualita/pagine/l-onu-contro-l-unione-europea-inumano-l-accordo-con-la-libia>.

¹³ http://www.lemonde.fr/afrique/article/2017/11/20/manifestation-a-paris-non-a-l-esclavage-en-libye-liberez-nos-freres-liberez-nos-s-urs_5217718_3212.html.

¹⁴ The episcopal conference of the Italian bishops of the Catholic Church, the official assembly of the bishops in Italy that carries out certain tasks and has the authority to set the liturgical norms for the Mass. Episcopal conferences receive their authority under universal law or particular mandates.

162 refugees which included families, single mothers, unaccompanied children and disabled people from Libya has arrived in Italy in two Italian military aircraft. Upon arrival, all refugees went through medical checks and were given warm clothes and a hot meal before undergoing identification procedures, following the transfer to several reception facilities where accommodation and assistance have been provided by the Episcopal Conference of Italy through Caritas.

The number of the refugees that will be transferred from the detention centers of Libya to Italy is expected to reach 400, people with special needs and vulnerable, that cannot be sent back to their home countries¹⁵.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is applicable during the entire migration process of migrant workers and members of their families, which includes preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

European law

The Convention of Istanbul¹⁶ concerns the Conventions for preventing and combatting the violence against women and domestic violence, adopted in 2011 by the European Council and entered into force on 1 August 2014. The convention fights for the prevention, the protection and the prosecution of the violence. Migrant women, with or without documentation are particularly vulnerable to gender-based violence, so the Convention prohibits pretexting the status of migrant or refugee in order to discriminate in the implementation of its provisions and includes a number of obligations aimed at adopting a conception of violence against migrant women and gender-sensitive asylum seekers, introducing the possibility of granting migrant women who are victims of domestic violence and whose residence status depends on their spouse or partner and tries to continue the residence permit when the relationship ceases. This measure allows the victim to stop the relationship without losing his or her residence status. The Convention also fights for allowing migrant victims who have left, without returning, the country where they had immigrated because were forced to marry in another country, to recover their residency status.

In addition, the Convention includes provisions stating the obligation to recognize gender-based violence against women as a form of persecution within the meaning of the 1951 Refugee Convention and includes the obligation to ensure a gender perspective in the refugee determination process. It is important to note that the protection issues for women asylum seekers are different from those of

¹⁵ <http://www.unhcr.org/news/latest/2017/12/5a3e3d155/ground-breaking-first-evacuation-162-vulnerable-refugees-libya-italy.html>.

¹⁶ <https://www.coe.int/en/web/istanbul-convention/home>.

men. Women may flee gender-based violence but be unable to disclose useful or reluctant information during a refugee determination process that is culturally sensitive. The unaccompanied women are often exposed to sexual harassment and exploitation and are not able to protect themselves. To address the problems of asylum seekers, the Convention of Istanbul sets out the obligation to introduce gender-sensitive asylum procedures, guidelines and support services.

Another provision of the Convention reiterates the obligation to respect the principle of non-refoulement to a country where their lives may be at risk and where they may be subjected to torture or inhuman or degrading treatment or punishment.

At the international level, the Istanbul Convention is similar to The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, an international bill of rights for women which defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination¹⁷.

Case of *Siliadin V. France*¹⁸

In this case, a 15 years old Togolese girl was sent to France to work as a baby-sitter, in exchange of schooling and an immigration status. After few months, she was transferred to another family, where she worked from 7am to 8:30pm every day, without being paid, for 3 years. Given the Court's decision, the defendants were acquitted under the Penal Code because the applicant was not recognized as being in a position of vulnerability or dependence on the motive that she could leave the house unattended and could contact her family.

The Court examined whether the facts violated the article 4 of The European Convention on Human Rights and noted that „slavery domestic economy” persisted in Europe for thousands of people, but in this case, was more a question of 'servitude' and not of 'slavery' and does not directly refer to violence regarding women, but the Court noted that she had no resources, she was vulnerable, isolated and without means of subsistence other than this family and was entirely at their mercy. She had no freedom to movement and no free time. Most of these factors increase the vulnerability of women face violence or render them incapable to get out of the violence, or situations of potential violence.

At the International level, The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly, an international bill of rights for women, by 189 states¹⁹.

¹⁷ <http://www.un.org/womenwatch/daw/cedaw/>.

¹⁸ Application no. 73316/01, ECHR, available on [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-69891%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-69891%22]}).

¹⁹ <http://www.un.org/womenwatch/daw/cedaw/>.

The European Union Agency for Fundamental Rights (FRA) and some institutions for the human rights started the CLARITY project (Complaints, Legal Assistance and Rights Information Tool for You) to present the institutions, organizations that the European citizens could call regarding their fundamental rights. This tool best suits to the intermediary institutions and non-governmental organizations guiding victims of discriminations or any other fundamental right that are non-respected²⁰.

The human rights of the immigrants are also protected by the Directive on the right to family reunification²¹, which 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 him²². 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 Justice²³, 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 child²⁴.

This subject is treated differently in England, by the UK Immigration Law, which states a minimum of annual earnings of 18'600£ for the family member that makes a demand for the family reunification for his spouse. An additional amount of 3'800£ for the first child and 2'400£ for each additional child. This rule is very difficult to be accepted by the citizens that doesn't earn that much and are obliged to live separately from their beloved once. This is a vulnerable category of people

²⁰ <https://fra.europa.eu/clarify/en>.

²¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0086>.

²² Article 2 of the Emergency Ordinance no. 194/2002 on the regime of aliens in Romania.

²³ 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>.

²⁴ 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 2.05.1991, no. 176*”.

and the ones that suffer the most are children, because in this case the principle of the best interest of the child is not respected²⁵.

A similar law rules in Italy (*ricongiungimento familiare*), the Decree 5/2007²⁶, in line with the Directive 2003/86/CE, which states the minimum income for the family member in charge.²⁷ For example, for two children aged less than 14, the income is 11'649.82 euro.

Romania also ruled a new law regarding this subject²⁸, stating that the gross average wage, one of the conditions to be fulfilled by foreigners requesting the extension of the right to temporary stay for work, was increased from 3'131 to 4'162 lei²⁹. According to the Art. 56 para. (1) of GEO 194/2002 on the aliens' regime in Romania³⁰, to the foreigners entering Romania for employment shall be extended the right of temporary residence for work purposes if they submit the individual full-time employment contract, registered in the general register of employees, which shows that the salary is at least the gross average earnings. In the case of highly qualified workers, the salary must be at least 4 times the gross average earnings.

The case of a disabled person

Mujeen Mustafa, an 18 years old Syrian refugee with cerebral palsy, from Aleppo, crossed the Mediterranean Sea to arrive in Germany, in a wheelchair. She wrote a book, „The girl from Aleppo”, about her long journey, about her life before the war, about her journey and about how she became a „a thing to be carried on board” and, specially, about her new life in Germany, the way she integrated and where she is living a normal life as a student, but also about her regrets because she misses her country, where she could never go back and the fact that her family's status is not recognized in Germany and instead of having a job according with their studies in Syria, they have to go to school and learn German.

This is an example of vulnerable people struggling for their life, for the respect of their dignity and democracy.

The unaccompanied minors

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)³¹, for responding to the information needs of both EU and national institutions by providing up-to-date,

²⁵ <http://www.politics.co.uk/comment-analysis/2017/08/03/legal-victory-provides-lifeline-to-families-torn-apart-by-th>.

²⁶ <http://www.stranieriinitalia.it/news/ricongiungifam.htm>.

²⁷ <http://www.stranieriinitalia.it/attualita/attualita/primopiano/ricongiungimento-familiare-il-reddito-minimo-per-il-2017.html>.

²⁸ <http://igi.mai.gov.ro/ro/comunicat/modificari-legislative-0>.

²⁹ <https://legeaz.net/monitorul-oficial-5-2018/lege-3-2018-legea-bugetului-asigurarilor-sociale>.

³⁰ <http://www.refworld.org/docid/544676df4.html>.

³¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:131:0007:0012:EN:PDF>.

objective, reliable and comparable information on migration and asylum³². 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.

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. When they request the asylum status, the minors are subjects of an age-test, in order to establish the real age. Most of the immigrants pretend to be minors, but after the finger prints and X-Ray exam many of lose their rights to benefit from minors regulations and are forced to leave the host countries.

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

In Romania, according to the LAW no 122/2006 on asylum in Romania³³, the asylum application of an unaccompanied minor is analyzed with the highest priority by the National Refugee Office, who takes steps to appoint, in the shortest period possible, a legal representative who will assist him throughout the asylum procedure.

In case if the unaccompanied minor cannot prove his/her age and there are serious doubts regarding his/her minority, the National Refugee Office will request a legal examination to evaluate the age of the applicant, with the prior written approval of the minor and his/her legal representative. According to the same law, unaccompanied minors can benefit from the same protection offered to Romanian minors who are in a difficult situation.

In order to guarantee the democracy and the protection of their Human Rights, the family reunification in the case of unaccompanied minors who are the beneficiaries of a form of protection is done according to the best interests of the child. The Romanian Refugee Office will automatically begin the family reunification procedure with the agreement of the minor and the legal representative is requested. In the case in which the family of the unaccompanied minor has been found, the

³² 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.

³³ <http://prorefugiu.org/wp-content/uploads/2011/03/Law-no.-122-from-2006.pdf>.

officials of the National Refugee Office specially designated for this purpose will analyze the possibility and conditions to carry out the reunification and issue a decision that is motivated in this sense, that is subject to means of appeal.

Conclusion

The immigrants could search the democracy and the human rights differently from country to country, depending from where they come and where they go, depending of the conditions of each country, if it is a democratic country, a communist one or one confronting the war.

The vulnerable people can depend on their parents' conditions of staying in the host country or can be unaccompanied, 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 principles regarding the respect of the human rights and the democracy.

During the 4th Annual International Conference, named „Law and Administrative Justice from an Interdisciplinary Perspective” held at the National School of Political Science and Public Administration in Bucharest, Romania, I had the opportunity to listen many opinions and learn many interesting facts about the immigrants, the vulnerable people among them, especially the refugees, the situation from different points of view, people from different departments that analyzed the situation from different countries. This conference helped me to enlarge the knowledges and meet people which whom I could collaborate regarding the immigration subject.

Each person leaves his country hoping for a better life, for less discrimination, less violation, better life and health insurance, better schooling and respect of the human rights and dignity. Unfortunately, most of the time, the reality is different of what they imagination and they have to struggle and keep going, accepting the situation and doing their best to integrate and to adapt themselves.

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