Protection of Refugees according to international regulations

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Abstract: Refugees are foreigners who have been granted asylum, are recognized their refugee status, other foreign beneficiaries of subsidiary protection did not meet the legal conditions for being granted this quality. The regulations contained in the 1951 Refugee Convention, the Contracting States shall apply the provisions concerning the rights and obligations contained in this to all refugees without discrimination due to race, religion or country of origin.

Keywords: refugees; persecuted persons; protection; non-discrimination; international regulations.

Introduction

Refugees are foreigners, but there is a special category of them, so that their status and legal regime are governed by other laws than those which determine the status of foreigners in general. Internationally, the rules relating to the situation of refugees are contained in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, and at European level in the European Convention on Human Rights (in particular in Article 3, which prohibits the removal, expulsion or extradition of persons to countries where there is a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment) and in the Charter of Fundamental Rights of the European Union (in particular Articles 18 and 19 on asylum and respectively protection in the event of removal, expulsion or extradition), plus a number of secondary legislation of the Union, usually Directives, which complement the legal framework established by the instruments shown.

The precarious situation of refugees and the protection granted to them cannot be understood without recourse to the standards contained in the rules on the international humanitarian law, as they are the class of persons through which are visible violations to the human rights [1].

The primary responsibility to respect, protect and ensure the exercise of human rights and fundamental freedoms lies with the specialized bodies of the states, in Article 2, para. 1 of the International Covenant on Civil and Political Rights, providing that the signatory states undertake to respect and to ensure to all individuals within their territory and within their competence, civil and political rights recognized in that instrument, without discrimination, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, being also prohibited any such distinction based on any other circumstance.

If the citizen or resident is forced to leave the country, as his rights are infringed, primary responsibility of protection lies with the state of refugee reception, according to their obligations under the 1951 Convention and complementary regional legal instruments.

1. Forms of protection of refugees resulting from international regulations

Protection of Refugees began in antiquity, but the beginnings of its universally organization is due to the International Committee of the Red Cross, the system being further developed by the League of Nations [2].

Throughout human history for certain categories of population movements in other countries have been linked to their social or professional role, or have represented the consequence of military conflicts, religious and political persecution, economic problems and other needs or danger. Help of those who need refuge from persecution was initially based on humanitarian reasons, and then political, being considered for a long time that their protection is the prerogative of ecclesiastical rules [3].

In the twentieth century phenomenon has registered an unprecedented scale, which led to the formation of international refugee law, creation of contemporary public international law.
Prior to adoption of the Convention on the Status of Refugees of 1951, international procedures were developed by the League of Nations, achieving some international agreements in this area so that the situations arising in practice left no room for too many interpretations.

The way people were treated in the past was regarded as a matter of sovereign jurisdiction of that State [4], the international community's interference in this matter is unthinkable.

If the rights of foreigners were ignored and/or denied by the State in which he was, the home state could intervene, granting diplomatic or consular protection.

Subsequent international legal norms of the Second World War on the refugee situation worldwide, primarily evidenced by the creation of the United Nations High Commissioner for Refugees and the adoption of the Convention of 1951, led to the evolution of the idea of international protection from diplomatic and consular protection, to the more generous notion of instrument for the protection of human rights.

With the strengthening of this system, the individual has come to be recognized as possessing the power to exercise his rights [5] and the failure or inability of the country of origin to fulfill its obligation to ensure respect for human rights has become a matter of international interest and humanitarian intervention object.

The main duty of a State is to establish and maintain order within its borders, without discriminating in any way persons under its jurisdiction, but as states cannot exist outside the international community and this also bears the same obligation, when required.

Since the second half of the twentieth century international refugee protection procedures experienced a great development under a system created and supervised by the UN closely correlated with recognition and guarantee of human rights. Thus, Article 14 of the Universal Declaration of Human Rights (adopted by the United Nations on 10 December 1948) states that everyone has “the right to seek and to enjoy in other countries asylum in case of persecution”.

Refugee Convention, adopted on 28 July 1951, governs the granting of refugee status to persons who had left home because of persecution, while establishing the legal regime applicable to them in the State of refuge.

According to art. 1 letter A para. 2 of the Convention, a refugee is a person who due to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or due to fear, does not want protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, due to such fear, does not want to return.

The provisions of the Refugee Convention will not apply to persons who cannot be classified in this category because there are reasonable grounds to believe that:

- they committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments relating to these crimes;
- they committed a serious non-political crime outside the country of refuge prior to their admission to that country as refugees;
- they have been guilty of acts contrary to the purposes and principles of the United Nations (art. 1 letter E of the Convention);

As formulated, the provisions of the 1951 Convention, interpreted literally, do not cover some important categories of people who leave their country and which, lately, are the most numerous groups that generically are called “refugees”. Thus, would not fall under the Convention and the Protocol that provides protection and assistance to refugees, people who are considered to represent “economic refugees” nor those reached in this situation following international or internal armed conflicts.

The doctrine was expressed the view according to which the grounds for leaving the country of origin are broader, referring to situations like: oppression, persecution, threatening life or liberty, excruciating poverty, war or civil strife, natural disasters (earthquakes, floods, drought, famine) etc., which would lead to the conclusion that they are included in the category of refugees and persons who have been forced to leave their country because of armed conflict, remaining on the territory of another State without losing or renouncing to the citizenship of origin [5].

Moreover, over time, the United Nations High Commissioner for Refugees has used different terms to refer to people in need of international protection that are not covered by the definition of the Convention (“internally or externally displaced persons” or “persons of interest”), but lately, it used the term “refugee” in the broad sense, including people outside the country of origin, since they need international protection because of serious threats to life, freedom and security in country of origin, as a result of persecution or violence, social, generalized disorder.
Throughout the Convention it is not mention the term “asylum” as a form of protection for foreigners, considering that regulation of this institution should be left to the exclusive jurisdiction of the states.

Traditionally, asylum was considered the applicant's right to refuge in a State other than that in which he originally reside, but with time this term has become increasingly more interpreted as the prerogative of states to provide protection to exiles and refugees, as also confirmed by the International Court of Justice [6].

Territorial asylum is a sovereign right of the State on entry and establishment on its territory of other nationalities who are subject to persecution in their home country for political, religious, scientific activities, etc., considered (in home state) against law [7].

The right to grant or refuse to grant territorial asylum is a manifestation of the requested State sovereignty, but after award, the state must act – to whom admitted this status – according to the general principles of international law and conventions on international rights of foreigners to which it is part [8].

Along with territorial asylum there is diplomatic asylum, which is practiced on humanitarian grounds as a temporary refuge right, granted to persons wanted for political reasons, as their lives may be in danger; initially, with a customary basis, this form of asylum was stipulated in some agreements between Latin American countries.

Diplomatic Asylum is defined as a right to grant protection in embassies or consular offices premises in a state of citizens of the State, followed by the authorities or whose life is in danger due to internal events [9].

Under Article 18 of the EU Charter, the right to asylum includes the following:
- protection against refoulement of refugees, including not rejecting them at the border;
- access of refugee to territories for inclusion in fair and effective processes for determining the status and needs of international protection;
- evaluation of the request for asylum in fair and effective trials (with the assistance of qualified interpreters and well trained representatives of responsible authorities and access to legal representation and to organizations who can provide information and support) and effective review (with adequate legal aid) in the state that receives the refugees;
- access of refugees to UNHCR (or its partner organizations);
- treatment under appropriate reception conditions;
- refugee status or subsidiary protection status when the criteria are met;
- ensure the exercise by the refugees of rights and fundamental freedoms;

### 2. Obligations of refugees to the receiving state

Obligations of refugees to the receiving state are similar to those of any foreigner [10]. In accordance with art. 2 of the Convention adopted in 1951, refugees are required to comply with laws, regulations and measures to maintain public order of the State in which they took refuge and this will give them a statute broadly classified by the following parameters:
- the personal status of a refugee shall be governed by the law of its domicile state or, if he has no domicile, by the law of the State where he resides (art. 12);
- equality between refugees and foreigners in the acquisition of movable and immovable property (art. 13);
- protection of copyright, industrial property, inventions, designs, models, trademarks, granted equally in relation to citizens of the state of residence (art. 14);
- access to courts across all States Parties to the Convention, refugees benefit from the same treatment as any citizen, including legal assistance and exemption of cautio judicatum solvi (amount of money that foreigners, as plaintiffs in a lawsuit, according to laws of some states were required to submit as collateral in case the action would have been rejected, being forced to court costs and other damages) – art. 16;
- an equal status with nationals of the State on whose territory the refugees are and regarding: the pursuit of professions paid, the right to housing, primary education, public assistance, enforcement of labor law and social security, administrative assistance (art. 17), freedom of movement (art. 26), freedom to practice religion chosen and decide on the religious education of their children (art. 4) etc.

Moreover, there are few provisions with restrictions or different treatment compared to the nationals of the State in which they took refuge in the exercise of rights. For example, according to art. 36 and art. 37 of the Constitution of Romania, the right to vote and to be elected is restricted to citizens.
One of the most important rights enjoyed by refugees relates to their non-refoulement. In literature, this principle is considered by some authors as having a value of customary rules constituting a general obligation, enforceable against all states, thus including those who have not signed the 1951 Convention [11].

The principle of non-refoulement does not apply to persons who cannot be granted refugee status because they are considered a threat to state security or have been convicted by a final judgment for committing a serious crime and are a danger to the community or there are serious indications that they have committed crimes against peace, war or against humanity. Exclusion from the principle of non-refoulement aims also those guilty of actions contrary to the aims and principles of the United Nations (shown in the Preamble and Art. 1 and 2 of the UN Charter) and those who have committed serious crimes of common law outside the country of origin before obtaining the right of residence, based on refugee status [12].

Individuals who do not meet the definition of refugee, formulated in the Convention adopted in 1951, but they obviously need assistance from the international community can benefit from the state in which they seek subsidiary protection, which is regulated as an alternative to refugee status.

Subsidiary protection is recognized as a third-country national or a stateless person who does not qualify as a refugee but in respect of whom there are substantial grounds to believe that, if he would be sent to his country of origin (or, being a stateless person, the country of former habitual residence) would be subject to serious risks, such as the death penalty, torture, inhuman treatment or punishment, serious danger to life due to indiscriminate violence in that country in case of international or internal armed conflict etc.

Conclusions

Although it covers several fundamental human rights, asylum is an independently right, granted by a State other than that of origin, to people who leave their country to secure a going-life protected from any risk, with safety and personal security.

For over 60 years since it is in force, the 1951 Convention was sufficiently flexible to allow international protection of various categories of people forced to leave the country. But like any regulatory instrument this has its own limits also, so that despite extinguishing interpretation of the definition of the Convention, there are some differences between recognized refugees according to it and the great mass of immigrants who need international protection. For example, some people who leave their home country after a civil war or other forms of armed conflict or indiscriminate violence are outside the definition of the Convention, although they do not enjoy the protection of the country of origin. Even if some of these people can still get refugee status on the grounds that they fear and of persecution caused by the reasons listed in the Convention, others cannot achieve this status, but may benefit from subsidiary protection as they run only from the effects of war and accompanying social disorder, including the loss of homes and livelihoods – situations that do not necessarily involve “fear of persecution”.

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