Migration and Political Asylum

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Abstract: Migration is an important topic on the public agenda, as well as in the area of effervescent political debate and public policies, and has been so especially in this past decade, in the national and European plane. The recorded evolutions may easily exemplify the way in which liberal democracies function and the process of European construction, implicitly the process of change in the immigration policy, degree of adaptability and opening to change, the controversial character and the difficulties overcome on this path.

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1. European policy of migration

The EU has attempted to find the instruments necessary for building a common policy on migration, but many a time it has collided with challenges against this phenomenon brought about by the concept of sovereignty of the nation-state. In essence, migration is one of the rather sensitive themes of cooperation among states, directly affecting the idea of national sovereignty.

The development of the European normative frame on migration has forwarded a political construct overcoming the exclusivism of cooperation, by a common exercising of national sovereignty. If on the national level the political reactions to immigrants may reflect the ideas of nation, tolerance, diversity and states’ individual option regarding the migrants’ integration, their access to the labour market and frontier control, as the immigration, asylum, and citizenship topic has imposed itself in the sphere of the European Union’s political preoccupation, we remark a qualitative, successive and necessary progress in the matter of common management of the immigration phenomena and the risks thereof.

We may say that the foundations of a common policy in the matter of migration were laid in 1986, with the Single European Act, or even in the prior period, in 1985, when the governments of Germany, France and the Netherlands signed the Schengen Agreement establishing common procedures regarding immigration in the signatory states.

By creating the Space of freedom, security and justice, the European Union offered a guarantee to the free circulation of persons, ensuring the security of European citizens and the realisation of a differentiation between the internal frontier and the external border.

In 1992, by the Maastricht Treaty, one created the three-pillar formula, the third pillar being dedicated to Justice and Internal Affairs (JAI) and having as main concern the policy of asylum, the rules related to the crossing of the common external borders and the immigration policy. As a result of a Commission’s study, in June 2000, a Communication was presented the same year (November 2000) about the EU community migration policy, having the merit to bring closer together the legal status of third states citizens to the status of the EU member states citizens, which means equal treatment and promotion of diversity.

As regards migration, the Stockholm Programme forwards as significant novelty the establishment as a priority of the Global Approach on Migration and the external dimension of the European migration policy. The Stockholm measures refer to the support for third states citizens in issues such as their integration and rights granting – the equality in rights between the third states citizens and EU citizens, conclusion of partnerships with the origin countries, without referring however to the development of a common strategy regarding labour migration.

The consequences felt as a results of Romanians’ migration may take the form of social costs, which puts pressure on the state’s budget, the occurrence of labour force deficits in certain sectors in the domestic labour market, become more acute in the periods of economic growth. In this context, immigration and bringing workers from third states was a rapid and available response for Romania, in order to solve the pressure on the national labour market.
2. Policy of migration and asylum in Romania

The migration of Romanians for jobs, either called emigration or, after 2007, when Romania became a EU member state, the mobility of the labour force in the EU community space, already represents a mass phenomenon affecting all the aspects of the life of Romanian society and implicitly immigration.

In the year 2010, the number of Romanian migrants left for work abroad is estimated at 2.8 million, Spain and Italy being the destinations targeted by almost 75% of the Romanians in search of a job across the border. What is defining for Romanian migration is the travel abroad for jobs, and most migrants are included in the category of active population (15-64 years of age), women and men alike. Furthermore, it is a circulating migration, with temporary character, the profile of the Romanian migrant who travels for work abroad being that of worker in construction, if he is a man, and household service provider, if she is a woman.

We remark a close correlation between the characteristics of the Romanian migration and the profile of the foreign worker we find in the sectors of national labour market. The Romanian migration has recorded even since 2009 a series of visible evolutions that got accented and become clearer and clearer during the year 2010.

Although the Romanians keep migrating for jobs, the number of departures is decreasing. The changes occurred refer to the typology of the Romanian migrants and of Romanian migration. Now it is the specialists who migrate, with high qualifications, from the fields of health, education, technical trades, IT, the migration being considered a rather long-term project, with a character that tends to get permanent. These aspects are reflected also in the percent growth of the concentration of Romanian migrants in destination countries such as Great Britain, France, northern country or destination outside the EU: Canada, the USA.

Political asylum and extradition in international law are aspects with a strong character of present interest, imposed by the international situation in the last century and especially by the evolution of the phenomenon after the collapse of the socialist block, and many more. The phenomenon having triggered massive displacements of persons had multiple causes, among which the most important were those generated by economic crises and military conflicts that have shaken mankind along history. Considering the level of economic, social and political development, the area we inhabit constituted, during the entire period of the 20th century and the beginning of the 21st, a preferred destination for large masses of people. Due to this ample phenomenon, we appreciate as extremely important the approach of the intuitions of political asylum and extradition, in order to distinguish it from diverse forms of migration or the institution of refugee. As part of the same space, neither the Republic of Moldavia nor Romania have been exempted from the presence of asylum seekers in different crisis situations occurred in their close vicinity or in further areas and consequently they have been put in front of extremely complex situations requiring an urgent solution. Unfortunately there have been also moments when the legal and institutional mechanisms that should have been put in motion have not functioned appropriately, but in general the two states have honourably fulfilled the task they had based on universal or regional agreements in which there are parties; their complexity has raised however numerous problems both to theoreticians and to practitioners. Without attempting to draw a history of that moment, we insist to remind only some of the most complex situations which imposed both to the Republic of Moldavia and to Romania a deep involvement in the solving to the issue of political asylum seekers:
- the Greek crisis in the post-war period, culminating with the civil war having generated the massive emigration of the former Greek Communists;
- the Chilean crisis, produced after the military coup that overturned the Salvador Allende government;
- the Yugoslavian crisis, in two important stages, more precisely:
  - the Bosnia-Herzegovina conflict;
  - the Kosovo conflict.
- the Transnistria crisis.

3. The analyse of these concepts

We reminded this moment for the very reason to highlight both the present interest of the phenomenon in se, and the need for conducting enhanced and systematic studies related to the aspects it comprises on the legislative frame on the universal and European level, and of the domestic regulation. Moreover, beside the research on the trends of this phenomenon and of the existing legislative frame, a significant preoccupation should be focused both on the theoretical aspects at the basis of this institution, and the analysis of the efficiency of the institutions created for this purpose, and for raising the awareness of the need for their modernisation, in close connection with the growth or reduction trends of the refugees waves. Although it refers only to the legal and institutional frame elaborated up to the present, this study takes into account also the historical and political evolution of the areas supplying refugees, the attitude of the Great Powers toward this phenomenon, and last but not least the tendency of more and more active involvement of numerous states with stable
democratic systems, which have manifested in many occasions the efficiency in support of asylum seekers and in fighting against the political-legal system having generated political asylum as phenomenon.

The present interest of researching this institution resides also in the fact the more and more states manifest their attachment to the natural right of the individual to affirm his political convictions, as well as the tendency to stop in their evolution the attitudes of anti-democratic governments, of absolutist systems and of the legal norms at their service. Such manifestations were encountered at the end of the 20th century and the beginning of the 21st century in the former Yugoslavia, Austria, Afghanistan or Iraq. If the interventions in the three states governed by totalitarian systems were predictable, the attitude of the EU and of the USA in the case of installation of far right governance in Austria was a total surprise for many analysts. These situations constituted a definite proof of the fact that the democratic world is decided to stop tolerating any antidemocratic system generating systemic breaches of human rights and consequently we should grant more attention to the preparation of norms and institutions meant to assist in the solving of such a situation. Among them we can mention also that related to the political asylum granting to those who no longer accept to bend before absolutism and despotism, even in its modern forms of manifestation witnessed in the past years. If we refer to the investigation degree, we must point out that the institute whose study we approached has constituted a priority for very few authors. Most frequently, papers have been limited to the brief presentation and analysis of the universal and European norms in the matter, without proceeding to a complex analysis of the phenomenon.

Thus, in the book International public law by Dumitra Popescu, Adrian Năstase and Florian Coman, the authors claim that the “asylum” in international law is the “right of a sovereign state to grant entry and settlement on its territory to foreign persons”. They appreciate that this legal fact is the consequence of their activity in the political, religious or other fields, and their activity is in contradiction with the legal order of that state. The modality of approaching the asylum institution leads to the idea that this is a more prerogative of the state’s institutions and not a right of the individual. A special merit in the development of this concept belongs to Victor Duculescu, who, in his work Public law institutions and international relations in dynamics considers that “the institutions of human rights, which include also the right to asylum, is an extremely complex institution, related to domestic legal order, and the international one”. He continues by saying that “it generates a set of rights, liberties and obligations people have to one another, and of states to defend and protect these rights, of the entire international community to watch to their observance”. As it results from his remarks, beside the role of the state we also remark the importance granted to international relations, as well as the fact that both states and international communities have the difficult task to ensure the protection of asylum seekers. By developing this approach, Professor Gheorghe Moca underlined in his course of International public law that “..... national sovereignty ceases to keep a rigid character of individual’s isolation to the international law, acquiring the transparency allowing, through the states’ agreement, the connection between the natural person and the international legal norm”. In arguing this trend, Professor Martiș Niciu appreciated that international law and implicitly the right to asylum, “will affirm itself in the future as a human right, not only as a right of states”. We remark from all the above that the asylum institution reunites differentiated approaches, the tendency being to transfer the state’s sovereign law to human rights, by which one may more easily realize the benefit of the asylum seeker’s status.

Most documents elaborated in the matter belong to the Romanian Institute for Human Rights, but in most circumstances they do nothing more than presenting the universal and European norms in the matter, without an analysis of the way in which they are present in internal norms or of the manner of their application. A special merit must be recognized to this institution because it has lately put at specialists’ disposal the jurisprudence of the European Court of Human Rights (ECHR), presenting the most diverse situations in which, more and more frequently, persons or even institutions act for defining human rights. There are endeavours of a more detailed analysis of the institutions of asylum and extradition found in works written by Gheorghe Iancu, Vasile Drăgoi, Corneliu Alexandru, Mihai Delcea, Alexei Potuță, Gheorghe Costachi, Alexandru Burian and others, but none of their works treats political asylum or extradition distinctly and none attempts to find the ways of solving the complex issues challenging the two institutions. Thus, Gheorghe Iancu talks about the problem of asylum in comparison with the issues raised by the refugees and foreigners, appreciating asylum as a protection measure. He confers asylum a double meaning, i.e. of place as surface or territory where a person cannot be caught by his followers, being a place where that person enjoys immunity and personal protection. Referring to the asylum institution in the work Migration and asylum, Vasile Drăgoi and Corneliu Alexandru appreciate that this is a right recognised exclusively to the persons who do not have the citizenships of the granting state, irrespective if they are citizens of a state or not, detailing thus the categories of persons who can benefit from the asylum rights by including the expats.

4. Conclusions

The study in se realises a detailed presentation of the manners of regulating the extradition institution, with ample referrals to the way they are influenced by international conventions or bilateral treaties in the matter. Lately, the treatment of the political asylum and extradition issues have become more and more interesting for specialists, as it was found that there are many situations when the existing norms and institutions could not solve the diversity of the problems generated
by the two, both among jurists and the administrative apparatus of political structures, as there are several incomplete or contradictory approaches that need clarification.

**Bibliography**


