

THE LEGISLATIVE BACKGROUND AND THE MECHANISMS SPECIFIC TO MIGRATION

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Abstract: Romania's adhesion to the European Union determined the adaptation of the Romanian legislation regarding migration (direct influence over migration); the legislation regarding the working force (direct and indirect influence over migration) and the legislation regarding the reciprocal recognition of the diplomas and qualifications (indirect influence over migration) in accordance with the communitarian aquis. After 1989, in Romania the main motivations of migration were transformed from ethnic and political into economic, a fact which led implicitly to the growth of temporary migration in absolute figures as well as poise in the total of migrants. At the European level it is pursued the adoption of some politics regarding the international cooperation in the field of migration. They pursue the establishment of some common measures in the field of researchers exchange, professors, students within the frame created at the EU level for the states members as well as for the candidate states. The legislation regarding the common rights og the economic immigrants represents for the countries of the European Union a solution against the age of the population, as well as the growth of economic efficiency.

Fluxes and mechanisms specific to migration. Before 1989, in Romania there were two mechanisms of migration: permanent migration which had as main motivations the political and ethnic ones and temporary migration in order to study or work abroad which was based only upon inter-governmental agreements between Romania and other countries. After 1989, the main motivations for migration were transformed from ethnic and political into motives of economic order. A consequence is the fact that temporary migration has raised in absolute figures as well as poise in the total of migrants.

At present there are a few mechanisms of migration through which migration takes place and through which persons from Romania migrate towards other countries even from the European Union.

1. Legal permanent migration
2. Legal temporary migration:
 - 2.1. Students
 - 2.2. Workers (migration of replacement)
 - 2.3. Refugees and persons who seek asylum
3. Illegal migration of transit
4. Circulatory migration with the help of migrating networks (legal or ilegal)

1. *Legal permanent migration* represents the migrating fluxes that leave from Romania towards tertiary countries in order to establish there through the following means:

- on the basis of obtaining visas of migration within some special programs of encouragement of migration for some people that possess qualifications which are deficitary in the receiving country Canada, Australia, New Zeeland, USA or other types

of programs (such as the visa lottery).

- through marriage with a citizen from a state member of the EU and the change of the residence place in the country of the life partner;- possibly as a refugee or asylum seeker from political or war reasons. During the last years it was not the case of Romania, but it was the case of the states from former Yugoslavia.

2. *Legal temporary migration* refers to those who move from the territory of one country from the EU for a delimited period of time (from a few months to several years). On the one hand it is about the students who go to study in the countries of the European Union and who will return subsequently (at least some of them) in their origin countries, on the other hand it is about the workers who go to work with working contracts finalized according the bilateral agreements between states. In the case of refugees who obtain right of temporary establishment within a host country of the EU or asylum seekers who ask for asylum on the basis of political reasons or who are hiding behind such reasons, this type of migration is more and more restricted.

3. *Illegal migration of transit* is the mechanism by which persons from tertiary countries, outside Central and East Europe emigrate in these countries, including Romania with the scope to migrate further into other states from the European Union. This phenomenon is relatively new and it was noted that its main characteristics are illegality and the implication of criminal organizations in the traffic with people. The migration of transit consists in an increasingly number of illegal immigrants, from which a part of them correspond to the criteria for asylum, but who prefer not to make these requirements form different reasons.

4. *Circulatory migration with the help of migrating networks*. Circulatory migration refers to the pendular movement between the country of origin and one or more countries of destination. The migrants go and work for a time abroad, they return in the country, stay for a while and they leave again to work abroad. In this context there are formed the migrating networks, networks through which those who want to migrate temporary abroad are helped and supported by the previous migrants.

The intention to migrate abroad for a working place is more probable for the persons from the communities with a higher rate of circulatory migration.

In the areas from where others have left before more persons will leave, where other migrants have succeeded and the signs of success are obvious the migration will be bigger. Thus there are formed migration networks when previous migrants address to the members of their families or their friends and relatives in order to work abroad, supporting them in the process of migration. The informational networks and institutions of the circulatory migration are on the one hand the innovative answer of the individuals to the disfunctionality of some formal institutions such as: working market, capital market, the insurance of products and prices, the mediation of the working force abroad by the state and other private agents, and on the other hand they are the adaptive answer of the community to new situations that are in contradiction with the traditional values.

In what regards the migration fluxes from the west to the east, there were identified two such mechanisms:

1. Temporary legal migration

2. Repatriation

1. *Temporary legal migration* comprises:

- workers that come to develop a working activity on the territory of Romania.

These may come as:

- individual enterprisers with their own businesses
- employees of the multinational companies
- employees of the subsidiaries of the companies in Romania
- tourists who visit Romania during the tourist seasons for short periods of time.

2. *Repatriation* refers to the Romanians who migrated in the EU previous to Romania's integration and who established their domicile there and some of them have meanwhile gained the citizenship of that country and who now want to come back and establish in Romania. This is also known as migration of return and is considered to have positive effects upon the mother country, because some of the repatriated persons become investors or managers of prestige. It is true that another part of the repatriated persons pursue to obtain profits on short term by the development of businesses of short term or take into consideration the reconstruction of some property rights.

Legislative-institutional frame regarding migration. The study of migration in Europe must be started by the analysis of the legislation, politics and institutions involved in the migration process in the EU.

The European Community was constituted by the Treaty of Rome from 1957, treaty which foresaw the four fundamental liberties within the Community, and these are: the free circulation of goods, people, services and capital. The free circulation of people in the EU is based upon the dispositions:

- Article 14 from the Treaty of the European Community: The establishment of the unique market, which includes also the free circulation of people
- Article 18 : The citizens of the European Union have the right to circulate freely on the territory of the Member States.
- Article 61 the following: Visas, asylum, immigration and other politics related to the free circulation of persons.

The right to free circulation of the people comprises the right to live in another Member state as well as the right to work in that state, even if that person is not a citizen of that respective country. The significance of the right of free circulation and the equal treatment is clear: there are eliminated any discrimination based upon nationality regarding employment, the establishment of salaries and the working conditions. It is desired to offer to the citizens of the member states the possibility to search for work in another Member State. By the exertion of this right it is practically realized the common market.

The legislation with influence upon the migration phenomenon in the EU is comprised in chapter 2 – The free circulation of people and Chapter 24 – The cooperation in the field of justice and internal affairs.

In these two chapters we encounter:

- a. the legislation regarding migration with direct influence upon migration;
- b. the legislation regarding the market of the working force with direct and indirect influence upon migration;
- c. the legislation regarding reciprocal recognition of the diplomas and qualifications with indirect influence upon migration,

a. Legislation regarding migration. For a long period of time the right to enter and live on the territory of a Member State of the EU was governed by laws at the national level elaborated by each state. It was possible to enter and work on the basis of an entering visa and a sojourn visa, visas granted by each member state. Only after 1999, when the Treaty from Amsterdam came into force, this instituted the so called 'Space of liberty, security and justice' and the EU received the necessary competences to

formulate common politics at the level of the European Union regarding the migration and asylum. In consequence in October 1999 at the European Council held at Tampere in Finland, the states member of the EU decided the formulation of a common politic regarding migration and asylum that must enter into force in no more than 5 years from the enacting of the Treaty of Amsterdam, that is no farthest than 2004. the domains taken into consideration for the formulation of this unique communitarian politic regarding migration which become the responsibility of the EU, include aspects as: the free circulation of people, the control at the external frontiers and the granting of visas, asylum, the immigration and protection of the rights of people who have tertiary nationalities and the judicial cooperation regarding civil problems. A common politic in the field of migration (especially of the migration towards the EU) and asylum has in view the adoption of a common position of the states member of the EU for the requests realized by persons from tertiary countries, as well as the control of illegal traffic with people. The program from Tampere was continued with the launching, in 2004, of the Program from Hague, which had as an objective the consolidation of the space of liberty, security and justice during the years 2005-2010.

b. Legislation regarding the market of the working force in the EU. The legislation and regulations in the field of the working force interests us for two reasons: the first will be that of recruiting the working force from outside the EU and the second one would be that of the way in which the legislation regarding the working force in the EU can influence the migrating fluxes.

An important change that took place during the last years in the politic regarding migration in the EU is that it is talked about more and more about adopting a new approach of the working force in Europe. After almost 30 years of restrictive politics of immigration and asylum, the governments of the states member of the EU have started to talk again (after the cessation of recruitment of the working force form the middle of the years 1970) about the benefits of the working force from migration and to take new measures regarding the migration of the working force. The change of politic at the level of the EU in the field of migration of the working force is reflected also by the Communication of the Commission from June 2003 related to the Immigration, Integration and Work. Communication analyzes the role of immigration in the context of demographic changes and suggests modalities of promoting the integration of immigrants within the host countries from the EU, like this:

1. The migrating fluxes are necessary to fill in the deficit of working force that will start to rise after 2010. it is expected that between 2010-2030 the number of employed persons will decrease with 20 millions of workers in the EU, due to the deficit of working force (thanks to the demographic decline) and the deficit of qualification.

2. The EU has to realize a better integration of immigrants. This is a condition to ensure future migrating fluxes, and in this context the EU has to consolidate the legal channels of emigration that must replace the actual illegal channels. The process of integration of immigrants must comprise key aspects such as: the market of working force, skills of language and education, insurance of dwellings, social and health services, the insurance of social, cultural and civil rights.

3. The EU must take initiative for the supply of a coherent frame within the field of migration at the European level. While the measures of integration of immigrants remain the responsibility of the States Member, the Commission must intensify the efforts for the realization of a more coherent frame at the level of the EU. This requires the coordination of the politics of integration at the national level.

The European parliament debated, in September 2007 the politics of the European Union regarding the immigration, and subjected to vote two reports – one regarding the legal migration and the other – about the illegal migration. The European Union needs immigrants, not only because of the population's age, but also in order to improve the economy.

It is necessary the insurance of a 'Blue Book' for immigrants. This could be the answer to Europe's need to have high-qualified workers, without recurring to an 'exodus of the brains' from the poor countries. The legislation regarding the common rights of the economic immigrants constituted another subject for debate.

c. The legislation regarding the reciprocal recognition of the diplomas and qualifications. In order to ensure the free circulation of people and workers, it is necessary the recognition of the professional diplomas and qualifications. The most important regulations in this respect at the level of the EU are a group of directives that create the premises of a general system of recognition of diplomas and qualifications and of a group of directives that regulate the recognition of qualifications for different professions.

The 4 directives that regulate this field are the following: Directive 89/48/CEE, Directive 92/51/CEE, Directive 1999/42/CE and Directive 2001/19/CE.

At the level of the EU, in time there were difficulties at the transposition of these directives within the national legislation. For example, Greece, Belgium, Great Britain, Portugal, Ireland and Spain delayed the transposition of the Directive from 1992 within the national legislation, encountering problems in the professions related to health, those from the tourist domain, sport and public services. That is why there is taken into consideration the elaboration of anew directive (the fifth directive) that is wanted to remain the only directive in this field and through which it will be simplified the aquis established through the previous directives. It is taken into consideration the application of the principle of automatic recognition of the diplomas and the recognition of diplomas on the basis of coordinating some minimum conditions of instruction.

Migrating politics and national legislations. Examples from the states member of the EU

The migrating politics in the states member of the EU are divided currently in four groups (OECD, 2003, SOPEMI) :

- politics for the regulation and control of the migrating fluxes ;
- politics for the strengthening of the legislation of fight against illegal migration and illegal employment of the foreign workers;
- politics for the integration of immigrants;
- politics regarding the international cooperation in the field of migration.

Politics for the regulation and control of the migrating fluxes. They aim the entering, residence and employment of foreigners. Most of them follow, in essence, the strengthening of the control at the frontier, the simplification and urgency of the processes of examination of the requests for asylum and the surcharge of the conditions of entering, residence and employment. The states member of the EU are preoccupied permanently with the improvement of the legislation connected to the problems of migration.

In *Germany* the new law of immigration presents as major change, a new definition of the rights of foreigners to remain and work in Germany. The distinction between the premises of residence and the working permits has gone: at present there is only one document, that replaces the other two, which indicates if the foreign citizen is allowed

or not to work. The new permits are divided into two categories: permits of temporary residence and permits of permanent residence. They will contain the description of the motif of immigration: studies, work, family reunion, asylum. The passing from the temporary residence to the permanent one is possible after minimum 5 years of residence. This conversion is conditioned by a series of requests, for example that the foreign employees to pay for 60 months the obligatory contribution to the pension fund and to speak the German language. On the other hand, it was adopted the measure that, for the integration of foreigner legal residents, be offered the possibility to take courses of German language and training programs.

In *Italy* The Parliament adopted in June 2002 a more severe legislation regarding immigration. Thus, the new law foresees the increase of the number of patrols in the area of the coast and the fingerprinting of all citizens from outside the EU who want to remain in Italy. The permits for residence are connected to the working permits, thus the citizens from outside the EU must leave the country in no more than 6 months of unemployment (in comparison with the 12 months before this law). The Italian employers who employ foreign workers must ensure them accommodation and to deposit a bail that will cover all the costs to repatriate them in their country of origin in case of unemployment.

And the *measures for the stoppage of fake requests for asylum* have been strengthened in several countries, especially in those who confronted with a major increase in the requests for asylum, such as Austria, France, Great Britain, Ireland, Sweden and so on.

For example, within the law of immigration and asylum enacted in 2002, *Great Britain* imposed conditions connected to the more rapid processing of asylum requests as well as supplementary barriers for those who do not register their request immediately after arrival. Also, like other states member of the EU, Great Britain considers the requests for asylum made by the citizens of the candidate countries as unfounded. In Romania, the law 203/1999, republished regulates the integration into work of foreigners on the territory of Romania and the conditions of issuing the working permits.

The working permit may be issued, at request, to the foreigners that fulfill the conditions foreseen by the Romanian legislation regarding the integration into work and who have applied on the documents of crossing the frontier the visa for long sojourn for employment or, by case, with the respect of the in force regulations, without being necessary to obtain the visa for long sojourn for employment, for the foreigners who encounter themselves in one of the following conditions:

a) they come from states with which Romania has finalized treaties, conventions or agreements of dissolution of visas for crossing the frontier for this purpose or for which Romania has unilaterally renounced to the compulsory visas;

b) they benefit of right for temporary sojourn in order to reunite the family, granted in conditions established by the legislation regarding the regime for foreigners in Romania;

c) they benefit of right for temporary sojourn in order to study and solicit the integration into work according individual contracts of work for part-time, with a schedule of maximum 4 hours per day;

d) they are family members – husband, wife, children – of Romanian citizens with domicile in Romania.

Politics for the strengthening of the legislation of fight against illegal migration

and illegal employment of foreign workers. The countries confronted with strong fluxes of illegal immigrants have improved their measures of fight against this phenomenon.

In *Spain* the legislation offers the possibility of immediate deportation of the illegal foreigners. The permits for permanent residence can be obtained only after 5 years of residence and work in this country.

Greece also strengthened the control at frontiers, especially in the north and east part of the country and enforced the sanctions applied to the companies that employ illegal immigrants.

The legislation from *Portugal* foresees measures that support the obtain of residence by immigrant workers and the regulations of the situation of illegal immigrants.

The new legislation from *Italy* foresees for the citizens from outside the EU illegal residents to be interdicted a new entrance (legal) for a period of 10 years than 5 years foreseen by the old legislation.

Yet the programs of regulation are viewed also as a positive action from the point of view of public security: governments can obtain important information about the number of persons with illegal status, their networks and the models of establishment in the respective countries. Also, by the enlargement of the opportunities to employ immigrants are discouraged the illegal activities.

Politics for the integration of immigrants. Practically these politics aim the measures to fight against discrimination and the learning of the language of the host country as well as the general process of naturalization of immigrants.

In *Denmark* the new law regarding the immigration includes, among other measures, a program with duration of 3 years for the integration of immigrants and refugees, with special emphasis upon the obligation to learn the Danish language. Such programs are also present in Austria and France.

In *Spain* it was funded a council for the politic of regulation and coordination of foreigners and of migration which coordinates the three levels of administration (central government, autonomous communities and municipality councils) with the scope to elaborate a general politic regarding immigration, including the occupation of the working force and social integration.

The directing lines of politic regarding the social integration of foreigners from Romania are encountered in the *National strategy regarding migration*. At this moment, only foreigners who have obtained a form of protection (recognized refugees and foreigners who benefit of conditioned humanitarian protection) benefit of special measures that pursue the facilitation of their integration within the Romanian society.

In all countries there are applied special measures for the integration of young immigrants within the market of work.

Politics regarding the international cooperation in the field of migration. They pursue the establishment of some common measures in the field of regulation and control of the migrating fluxes as well as special measures regarding the exchange of researchers, professors, students within the frame created at the level of the EU for the states member as well as for the candidate countries. Romania is mentioned in the international reports for the inter-governmental agreement about the status of Romanian workers from Israel, in order to ensure their social protection. Romania has also finalized the following agreements:

- The Convention between the Romanian Government and the Government of the German Federal Republic regarding the sending of Romanian personnel from the

enterprises with office in Romania in order to activate according working contracts, signed at Bucharest, on July 31, 1990 approved by HG no. 167 from March 7, 1991 published in the MO no. 61 from March 23, 1991;

- The Convention between the Romanian Government and the Government of the German Federal Republic regarding the occupation of the working force for the improvement of professional and language knowledge (Convention regarding the hosting working personnel) signed at Bucharest, on May 12, 1992 approved by HG no.402/25 July 1992, published in the MO no.206/ 24 August 1992;

- The Agreement between the Ministry of Work and Social Protection and the Federal Office for Work regarding the employment of Romanian workers for an activity with determined period in the German Federal Republic, signed at Bucharest, on September 13, 1999 approved by HG no.930/ 9 November 1999, published in the MO no. 581/29 November 1999;

- The Agreement between the Romanian Government and the Swiss Federal Council regarding the exchange of probationers, signed on November 25, 1999 at Berne, approved by HG 579/3 July 2000, published in the MO 319/10.VII.2000;

- The Agreement between the Romanian Government and the Government of the Hungarian Republic regarding the employment of season workers, signed at Budapest, on May 9, 2000 approved by HG no. 411/ 19 April 2001, published in the MO no. 227/4 May 2001;

- The Agreement between the Romanian Government and the Government of the Hungarian Republic regarding the exchange of probationers, signed at Budapest, on May 9, 2000 approved by HG no. 412/ 19 April 2001, published in the MO no. 230/7 May 2001;

- The Agreement between the Romanian Government and the Government of the Great Dukedom of Luxemburg regarding the exchange of probationers, signed ta Luxemburg, on July 20, 2001 approved by the Order of the Romanian Governemnt no. 36/ 16 August 2001, published in the MO no.511/ 28 August 2001.

- The Agreement between the Romanian Government and the Kingdom of Spain regarding the regulation and organization of the circulation of working force between the two states, signed at Madrid, on January 23, 2002, ratified by the Law no. 464/9 July 2002, published in the MO no.559/30 July 2002.

- The Agreement between the Romanian Government and the Government of the French Republic regarding the exchange of probationers, signed at Paris, on November 20, 2003 ratified by the Law no. 192/2004, published in the MO no. 486/31.05.2004

- The Agreement between the Romanian Government and the Government of the Portuguese Republic regarding temporary sojourn with the scope to employ Romanian workers on the territory of the Portuguese Republic, signed at Lisboan, on July 19, 2001 approved by the Order of the Romanian Government no. 35/16 August 2001, published in the MO no.511/ 28 August 2001, approved by the Law no. 12/2002, published in the MO.

Legislation regarding the migration in Romania. Concordance with the communitarian European aquis

The first initiatives for the creation of a new legislative frame in the field of migration took place in Romania at the beginning of the years 1990. Subsequently, once with Romania's request to adhere to the European Union, this activity intensified thus being adopted many laws and normative acts meant to ensure the adoption of the European communitarian aquis. To be noted is the fact that the legislation from the field

of migration was improved in time by completions and republications, in order to adopt the communitarian aquis from the field. The two main chapters of negotiation with the EU which comprised the legislation that influences migration were chapter 2 The free circulation of persons and chapter 24 The cooperation in the field of justice and internal affairs. For the most of directives within the two chapters of negotiations Romania has entirely accepted the communitarian aquis of chapter 2 of the Agreement of Association 'The free circulation of persons' in December 2000 without soliciting any period of transition or derogation, declaring that it will be capable to apply this aquis until the date of adhesion.

Thus there were registered remarkable progresses in the Romanian legislation regarding the regime for foreigners from Romania, the regime of refugees and their social protection and the fight against the traffic with people. On the market of working force it was regulated the granting of working permits. Thus according to the principle of free circulation of persons the citizens of the EU and the members of their families can work on the territory of Romania without obtaining working permits unlike other categories of foreigners.

In the report from 2003 regarding the progress of Romania to the adhesion to the EU, it was appreciated that Romania has realized supplementary steps in adapting its legislation to the communitarian aquis regarding the free circulation of people and workers.

Thus it was appreciated positively that: - from the beginning of the year 2003, the citizens of the EU and their families no longer need working permits in order to be employed in Romania, that by law it is ensured an equal treatment with that of the Romanian citizens regarding the syndicate activities; - the Constitution was surcharged in October 2003 in such a way that according to it the citizens of the EU have the right to participate to the local elections and the elections for the European Parliament.

As a result the Romanian legislation is at present completely harmonized with the Convention from Geneva from 1951 regarding the status of refugees and the Protocol from New York from 1967, being eliminated the possibility to retract a form of protection for reasons of national security and public order.

Thus, immediately after the apparition of the Country report from 2003, The National Office for Refugees has realized and handed in for approval a project of modification and completion of OG no. 102/2000, by which there are eliminated all the non-correspondences between the internal legislation and the documents from the in force aquis for the preparation of legislative projects and their duly initiation.

In completing these measures, it was modified and completed the OG no. 102/2001 by OG 43/2004, which updates the definitions of the forms of protection, eliminates the differences of treatment granted to refugees and those with temporary protection, confers to the ONR the quality of party in the processes that have as object asylum requests, as well as other aspects. It was improved and adapted to the European norms the entire Romanian legislation according the 3 big domains with influence over the phenomenon of migration:

- a. legislation regarding the migration (direct influence over migration);
- b. legislation regarding the market of the working force (direct and indirect influence over migration);
- c. legislation regarding the reciprocal recognition of the diplomas and qualifications (indirect influence over migration).

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