

PARALLEL BETWEEN THE REFUGEE CONCEPT ACCORDING TO THE CONVENTION RELATING TO THE STATUS OF REFUGEES FROM 1951 AND ITS PROTOCOL FROM 1967 AND THE REFUGEE CONCEPT ACCORDING TO EUROPEAN LAW

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Abstract

In this study our aim is to make a comparison between the refugee concept according to the Convention Relating to the Status of Refugees from 1951 and its Protocol from 1967 which represent the international approach and the refugee concept according to European Law (the EU Treaties, EU Directives, the Dublin Regulation).

This parallel will present first of all the similarities between the international approach and the European approach such as : the definition of a refugee; the conditions required to obtain refugee status; the definition of the term injury; same request for international protection; same parameters used to verify the existence of persecution; the conditions of cessation and the non refoulement principle.

Second of all the we will present the differences between the international approach and the European approach. European law completes the Convention and introduces new principles such as: subsidiary protection; temporary protection; different degrees of protection offered to refugees; the term persecution is defined ; the motivation behind persecution is defined ; recognising as persecution also the acts toward gender and children. Furthermore the cessation clause and the exclusion clause are defined differently in European law in comparison to the definition given by the Convention Relating to the Status of Refugees from 1951 and its Protocol from 1967.

Lastly we will conclude with a set of recommendations for both the Convention Relating to the Status of Refugees as well as for the European asylum system.

Keywords: *refugees, the Convention Relating to the Status of Refugees, asylum law, persecution, international protection.*

Introduction

"Refugees represent an anomaly in a world where human population is coordinated by the principle of each individual 's belonging to a nation, to a sovereign state. The refugee status is probably proof of breach of the social contract concluded between the state and its citizens".¹

In this article we propose to make a parallel between the refugee concept according to the Convention relating to the status of refugees from 1951 and its Protocol from 1967 and the refugee concept according to European law. *"The Convention represents the starting point in the field of asylum, which has inspired and has created various normative acts with international and european coverage."²* The Convention represents the international approach agreed by the members states of the UN. European law has the same definition for refugees as international law, but it has also extended the area of protection for refugees, including numerous provisions through which the principles from the Convention are implemented, allowing thus asylum seekers to claim

their rights in European courts if those rights have been violated. Therefore European law completes the Convention, either by explaining certain terms, or by introducing new ones.

Before analysing the refugee concept from these two perspectives listed above, -the international approach and the european one- we will briefly present the notion of international protection, a widely discussed concept in the sphere of international relations, without which there would be no possibility of obtaining refugee status.

The concept of international protection has emerged as a result of the exile of millions of people forced by various circumstances to leave their country of origin. This migration represents essentially the inability or lack of interest of the authorities in that state to protect fundamental human rights.

These rights and freedoms of people are normally protected by their country of origin but the lack of protection in these countries determines the need for international protection: the concept that characterizes the forced exile of people and explains their motivation to seek asylum in another country.

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¹ Vergatti, Cristina Narcisa, Statutul juridic al refugiaților, Institutul Român Pentru Drepturilor Omului, Bucharest, publishing house IRDO, Bucharest, 2009, www.irdo.ro

² Negură, Spătaru, Laura-Cristina, Papuc, Patricia, Scurta analiza a legislatiei europene si romane in materia azilului. Pozitia diplomatiei romane in fata crizei refugiatilor, publishing house The International Public Law Journal, ed The Legal Universe, 4/2016, October-December, Bucharest, pag 114

Unlike other categories of people, refugees are bound by extreme circumstances to leave their country of origin because their lives and freedoms are under threat and because these threats are not taken into account by the authorities, they do not benefit from the necessary protection they are entitled to. This can be caused by many reasons, either the authorities do not know how to react, whether if they should react or simply they do not want to react.

This requirement for protection that refugees need is the key element that distinguishes them from other foreigners. They can be perceived as outsiders, often with limited material resources, traumatized, having no identification documents, people guided by the single impulse of becoming part of another community where they can continue their lives without having their freedoms and rights under constant threat.

They are vulnerable because of the precarious situation that they are in. Besides their motivation to leave their country of origin; a motivation that varies from case to case; also the journey that they take to reach a new country is often paved with trauma and numerous negative experiences.

After they arrive to the new country, they have to undergo a very lengthy legal procedure in order to receive refugee status, a status which only some of them receive. This waiting period differs from state to state, but it is a hard time for the asylum seeker who has just reached that country, probably does not speak its language and where there are many cultural differences etc. In addition in this period of time the asylum seeker needs resources to cover his subsistence needs, access to medical services.

In light of these considerations, the concept of refugee will be defined and explained through a comparative presentation, namely the similarities and the differences between the concept of refugee from the perspective of the Convention Relating to the Status of Refugees from 1951, its Protocol from 1967 and the European law perspective.

1. Similarities between the refugee concept according to the Convention relating to the Status of Refugees from 1951 and its Protocol from 1967 and the refugee concept according to European law

The legal basis for asylum is primarily the Universal Declaration of Human Rights adopted by the United Nations Organization on the 10th of December 1948 which in Article 14 states the following principle: "Everyone has the right to seek asylum and to enjoy asylum in other countries, in case of persecution"³. The

first resemblance that we want to present concerns the definition of the refugee concept.

1.1. The definition of refugees is the same in the Convention as in European law

According to the Convention, the term refugee applies to any person who: "1) owed to well founded fear of being persecuted; (2) for reasons of race, religion, nationality, membership of a particular social group or political opinion; (3) is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country; (5) or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unwilling to return to it".⁴

In our view, the quintessence of this definition is given by the concept of *fear of being persecuted*. This fear consists of two parts, on one hand there is an objective element, namely the fear must be justified, must be real and on the other hand there is a subjective element, the feelings that the person has about the persecution.

There may be a variety of fears that cause a person to leave his country, such as natural disasters, famine, poverty, war, but only a *well-founded fear* is vital in recognizing a person as a refugee. Reasons such as poverty, natural disasters or global warming are not reasons for obtaining asylum.

Every asylum seeker is required to demonstrate the existence of a well-founded fear, the fear of being persecuted by at least one of the reasons given in the definition - race, religion, nationality, belonging to a particular social group, or political opinion. Often the fear of persecution is caused by more than just one element.

The common denominator of this definition, which is also the common denominator of the five reasons for persecution, is the concept of belonging. Affiliation, according to the dictionary, is: "*dependence or bondage of someone or something*"; "*belonging*" or "*relationship between an individual and the social class, the community, the party, etc of which he is a part*"⁵.

Affiliation is therefore the identification with a particular group of that community, a group that is defined by an essential feature of race, ethnicity, religious or political beliefs or another characteristic that differentiates that group from the rest of society.

After a more thorough analysis it can be noticed that the penultimate reason, namely belonging to a certain social group, essentially overlaps the other four reasons, but at the same time includes them, because all the facts imply an affiliation, namely the identification with a certain social group, having a certain dimension, race, religion, nationality or political opinion.

³ Declarația Universală a Drepturilor Omului, from 10 December 1948 (<http://www.monitoruljuridic.ro/act/declaratie-universala-a-drepturilor-omului-din-10-decembrie-1948-emitent-organizatia-natiunilor-unite-publicat-n-brosura-din-22751.html>)

⁴ Convention relating to the Status of Refugees, signed in Geneva on the 28th of July 1951 (http://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/1951_Convention_ROM.pdf)

⁵ <https://dexonline.net/definitie-refugiat>

History has demonstrated that the coexistence at state borders of various religious, linguistic, ethnic, political and non-political groups, with different interests, leads sooner or later to conflicts as a result of the struggle for supremacy, resources, etc.

As a general rule, the asylum seeker must be outside of his country of nationality because international protection cannot be enforced as long as the person is under the territorial jurisdiction of his or her country of origin

This well-founded fear of persecution must be related to the country of which he is a citizen otherwise there would be no need for international protection and no basis for asylum either. At the same time, there may also be the hypothesis that a certain person was not a refugee when he left his country, but subsequently became a victim of incidents in his country of origin. These incidents occurred in his absence and created an undesirable situation that has a direct impact on the person's return to his country of origin. As an example, we can take the situation of students or immigrant workers who live in other countries. In antithesis with this example, we also have the situation of stateless persons, who are often refused the protection of their country of habitual residence.

Following a more detailed analysis of the refugee definition, namely, aspect five of the definition, which states that the person can not or because of this fear does not want to be under the protection of that country, this idea essentially reinforces the concept that the refugee is in all these cases the person who can not benefit from the protection of his state of origin

In the 60 years since the adoption of the Convention Relating to the Status of Refugees, it has proved to be an instrument that can be used to provide international protection for refugees. As any legal instrument it has certain limits, and despite the relevant definition given by the Convention, there is still a clear disproportion between the refugees recognized by it and the great mass of persons in need of international protection who are not recognized as refugees.

For example, people who leave their country of origin following armed conflict, violence; or atrocities are still outside the definition of the Convention, even though they do not actually benefit from the protection of their country of origin. They flee their country because of the effects of war, disorder and fear of war, global warming, lack of livelihood, etc. But these people do not fulfill the imperative requirement imposed by the Convention, namely the fear of persecution.

The same definition of refugees is also found in European law. European law is made up of primary sources, namely the Treaty of the European Union and

the Treaty on the Functioning of the European Union, on one hand, and secondary sources, ie directives, regulations, etc., on the other hand.

The legal basis for the protection of refugees is primarily found in the Treaty on the Functioning of the European Union, Article 78 which clearly and explicitly states the following: *"The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to grant a status corresponding to any third-country national in need of international protection and to ensure compliance with the principle of non-refoulement. This policy must be consistent with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of refugees, as well as other treaties in the field."*⁶

Another similarity between the two legislative frameworks refers to the conditions that have to be fulfilled cumulatively in order to obtain refugee status.

1.2. The conditions required in order to obtain refugee status in the Convention are the same as those in European law

The 1951 Convention defines the elements that must be fulfilled in order for an asylum seeker to obtain refugee status and there have been no changes made in EU law on this topic. The three conditions to be met are the following:

- the asylum seeker has to face a fear of persecution;
- the basis for this persecution must be related to race, religion, nationality, membership of a particular social group/ expressing a political opinion;
- the existence of a causal link between the fear of persecution on one of these grounds (race, religion, nationality, belonging to a particular social group, political opinion) and the act of persecution.⁷

Once these elements have been established, the state must grant international protection to the asylum seeker who has been the victim of an injury, a concept that we will develop later in this paper.

1.3. The term injury has the same definition in the Convention as in European law

Article 15 from the Convention explains which types of serious injuries are taken into account:

- death penalty;
- torture or inhuman, degrading treatment that an asylum seeker may have in his / her country of origin;
- serious and individual threats to a civilian's life as a consequence of escalated violence, both in the event of armed conflict at the domestic and international level⁸;

⁶ Tratatul privind Uniunea Europeana, http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_1&format=PDF

⁷ Convention relating to the Status of Refugees, signed in Geneva on the 28th of July 1951 http://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/1951_Convention_ROM.pdf

⁸ Convention relating to the Status of Refugees, signed in Geneva on the 28th of July 1951 http://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/1951_Convention_ROM.pdf

European law does not come up with additions to the concept of injuries, a concept which is otherwise relative, leaving states with a great margin of appreciation, so in essence, the analysis of injuries is on a case by case basis. In order to claim the existence of an injury, the person concerned must draw up an application for international protection which has the same characteristics both in the Convention and in European law

1.4. The request for international protection under the Convention is identical to that in European law

The applications for international protection must be assessed in the same way and several elements are taken into account, such as for example all facts of interest concerning the country of origin at the time of the decision on the application, including the laws and regulations of the country of origin and how they apply. All information and documents provided by the applicant are necessary to determine whether the asylum seeker is being persecuted or seriously injured.

The status of the individual and his / her personal situation, such as gender, past experiences or age, are also necessary to understand his situation. This makes it possible to determine whether he or she may be exposed to any kind of injury.

In addition, it is checked whether the asylum seeker could benefit from the protection of another state, ie whether he can apply for international protection in another state.

Other elements are also considered such as: has the applicant already been persecuted, has he suffered serious harm or has he been the subject of the direct threat of such persecution or harm. It is also relevant if there is a serious indication of the applicant's fear of being persecuted, or a real risk of suffering serious harm.

If there are issues related to the applicant's statements that are not supported by evidence, those issues do not need to be confirmed if the following conditions are met:

- the applicant has taken all diligence and has made a real effort to support his application for international protection;
- the applicant has provided all relevant elements and has given satisfactory explanations regarding the absence of some evidence;
- the declarations of the applicant are considered to be both consistent and plausible and such statements are not contradicted by any general or specific information that is known and that is relevant to his application;
- the request for international protection was filed by the applicant as soon as he was given this opportunity, the exception to this rule being the case

where the applicant pleads a good reason for failing to fulfill this obligation;

- an overall credibility of the applicant was established;⁹

Any application for international protection must in essence be able to prove that the person concerned meets the conditions necessary to be granted refugee status.

1.5. Same parameters used to verify the existence of persecution

As we have shown the existence of fear is essential in order to be granted refugee status. Often fear is connected to acts of persecutions against refugees. The acts of persecution are not explicitly defined in the Convention, there are only some parameters introduced by the legislator. The acts of persecution must be:

- of a sufficiently serious nature or of a repetitive nature to constitute a serious violation of human rights, particularly those rights from which there is no derogation on the basis of Article 15 of the European Court of Human Rights;
- represent a multitude of actions, including human rights violations, that are sufficiently serious to impact on the individual;

Because the legislator's intention was to provide a more comprehensive framework, he introduced some possible ways in which acts of persecution can manifest:

- violence that can be of a physical, mental, sexual nature;
- taking different types of measures, such as legal, judicial, administrative measures that may be discriminatory in themselves or implemented in a discriminatory manner,
- prosecution or other sanctions that are discriminatory and disproportionate;
- criminal prosecution or other sanctions in the event of a refusal to perform military service in conflict situations, where the military service would involve the commission of offenses or the inclusion of acts falling within the exclusion clauses set out in Article 12, paragraph 2;
- acts against persons on grounds of sex, even acts against children;¹⁰

Not only the conditions for receiving refugee status are identical in international law to European law, but also the conditions for the cessation of refugee status, conditions that we will briefly outline below.

1.6. The conditions of cessation of the refugee status are the same in the Convention as in European law

Refugee status may be lost in the following situations:

- if the person concerned voluntarily lost the

⁹ Convention relating to the Status of Refugees, signed in Geneva on the 28th of July 1951 http://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/1951_Convention_ROM.pdf

¹⁰ Convention relating to the Status of Refugees, signed in Geneva on the 28th of July 1951 http://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/1951_Convention_ROM.pdf

protection of the country of which he is a national;

- if the person lost his nationality and voluntarily regained it;
- if he has received a new nationality and he benefits from the protection of the country of nationality he acquired,
- if he has returned voluntarily to the country from which he came;
- if the circumstances underlying his recognition as a refugee have disappeared, he may no longer continue to refuse the protection of the country of his or her nationality;
- in the case of a person without citizenship because the circumstances under which he has been recognized as a refugee have disappeared, he may return to the country where he was habitually a resident;¹¹

For the applicability of these provisions, Member States shall assess whether the change of circumstances is of sufficient significance and assess whether the refugee's fear of being persecuted can no longer be considered as founded.

1.7. The non-refoulement principle is defined in the same way in the Convention as in European law

The most important principle when considering the protection of refugees is the principle of non-refoulement (Article 33 of the Convention). The signatory States of the Convention are bound to respect the principle of non-refoulement on the basis of the international obligations they have assumed. States have the possibility to return a refugee only if this is not forbidden by international commitments. The situations in which a refugee can be returned to the state of origin are defined by the Convention:

- where there are good reasons to believe that that person presents a danger to the safety of the state in question;
- where the person concerned has been convicted by a final court decision for committing an offense of particular gravity which constitutes a threat to that state;
- if there are serious grounds for believing that this person poses a threat to the safety of his state;
- if that person has been convicted by a final court decision following a particularly serious crime that constitutes a threat to that state.¹²

The elements described above are the common elements that we have identified between the concept of refugee according to international law and European Law .

In the next part of the study, we will draw on the differences between the concept of refugee under the Convention and the concept of refugee under European law.

2. Differences between the refugee concept according to the Convention relating to the Status of Refugees from 1951 and its Protocol from 1967 and the refugee concept according to European law

Although the concept of refugee has the same definition in European law as in international law the protection afforded by European legislation is more extensive. The first newly introduced principle that completes the Convention is the principle of subsidiary protection.

2.1. Subsidiary protection is a new principle introduced by European law

Subsidiary protection is granted to any third-country national or stateless person who can not be considered a refugee , but only in those cases where there are valid grounds to believe that if the person is sent to his/her country he/ she would be subject to would be subject to a real risk of suffering serious harm.

If in the case of refugees the main characteristic is the fear of persecution in the case of people who obtain subsidiary protection the main characteristic is the exposure to a real risk in the event of return to their country of origin. European law complements the Convention and also introduces a new type of protection, namely the temporary protection.

2.2. Temporary protection is a new principle introduced by European law

Due to the situation caused by the division of Yugoslavia, the European Union saw itself facing a difficult situation, namely a huge wave of non-European citizens seeking asylum in the European Union. Therefore, the Member States of the EU collaborated and agreed that there was a need for a new legislation that could cope with the crisis. This is how Directive 2001/55 on minimum standards for giving temporary protection was created, to cope in the event of a large flow of displaced persons and to prepare measures that promote a balance of efforts between Member States in receiving such persons and bearing the consequences of these actions.

This directive defines temporary protection as an exceptional measure meant to ensure that displaced persons from outside the European Union who can not return to their country of origin are offered immediate and temporary protection. This legislation is particularly applicable in situations where there is a risk that the country's asylum system will not be able to cope with a large influx of people, and asylum claims would not be resolved in a timely manner.

This directive was necessary for various reasons. Firstly in order to improve the reception conditions for asylum seekers, Member States set minimum conditions in order to receive them. Secondly the directive promotes the idea of solidarity and shared

¹¹ idem

¹² idem

responsibility between Member States. Thirdly it is depriving Member States of the inability to deal with the lack of a legal framework that can be used in emergency situations.

This Directive defines the stages of decision-making in order to trigger the temporary protection procedure, which can be extended or terminated. At the same time the Directive defines the rights of beneficiaries, which have been harmonized, such as duration of temporary protection, which may be between one and three years.

In addition it also contains information on access to employment, accommodation, social protection, subsistence methods, access to the medical system and juvenile education.

Council Directive 2001/55 also includes provisions for the return of displaced persons to their country of origin and for the exclusion of individuals who have committed crimes or who have threatened the security of the state and as such are not eligible for subsidiary protection. Some provisions have also been added to protect unaccompanied minors, especially for those who have been subjected to various traumas (mental, physical violence, etc.)¹³.

Another principle reiterated in this Directive is the principle of solidarity and there is a mechanism established between Member States that allows the transfer of asylum seekers from one state to another.

2.3. Different degrees of protection granted to refugees by European law

From our perspective, the Convention can be divided into the following levels, which we will set out below. The first is that refugees are treated in the same way as other foreigners, the exception to this rule being the situation when the Convention provides refugees with more favorable conditions than to other foreigners.

The second level includes a variety of rights; rights that are granted by the parties to the Convention to refugees on their territory and rights that they would grant to their own citizens as well.

The third level concerns granting similar conditions to refugees as would be granted to their own citizens in terms of exercising their freedom of religion.

The fourth level of protection refers to granting refugees conditions no less appropriate than they would offer to other foreigners.

At a European level, these principles have been assimilated and have been complemented by the following, more explicit legal documents which are defining relevant aspects of the rights granted to refugees. Thus, the European Union has implemented:

– a common asylum regime in favor of third-country nationals valid throughout the European

Union;

- a common subsidiary protection regime for all third-country nationals who, without receiving European asylum, still need international protection;
- a unitary temporary protection mechanism for displaced persons in cases of mass influx;
- other common procedures through which the unitary asylum and subsidiary protection regimes are granted and withdrawn;
- the mechanisms and rules for determining the Member State responsible for examining an application for asylum or an application for subsidiary protection,
- rules defining the conditions for the reception of asylum seekers and of applicants for subsidiary protection;
- the partnership between Member States and third countries in coordinating the flow of people claiming asylum, whether it is subsidiary protection or temporary protection for the above-mentioned causes.

Where an individual is in serious danger, the European Union has the possibility of adopting interim measures as well.

Thus a Common European Asylum System has been set up containing five essential documents:

1. *A revised Directive on Asylum Procedures*: refers to decisions which are better in terms of asylum applications.
2. *A revised Reception Conditions Directive*: guarantees the availability of appropriate reception conditions (eg accommodation) for asylum seekers in all EU countries.
3. *A revised Minimum Standards Directive*: refers to the reasons necessary in order to grant international protection, thus contributing to strengthening asylum decisions at a European level.
4. *A revised Dublin Regulation*: strengthens the protection granted to asylum seekers throughout the process of determining the State responsible for examining the application and clarifies the rules governing inter state relations.
5. *A revised EURODAC Regulation*: allows law enforcement authorities to access the EU database containing the fingerprints of asylum seekers under restrictive conditions in order to combat the detection or investigation of the most serious offenses, such as crimes and acts of terrorism.¹⁴

Since the concept of persecution is the defining element in obtaining refugee status and since the Convention does not contain a definition of persecution, the European Union adopted a definition of persecution and an explanation with the motivation which we will further analyze in our paper.

¹³ Directiva 2001/55 s Consiliului UE cu privire la standardele minime pentru a oferi protecție temporară în eventualitatea unui flux mare a persoanelor deplasate și măsurile care promovează un echilibru al eforturilor între statele membre în a primi aceste persoane și a suporta consecințele acesteia <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

¹⁴ Migration and Home Affairs, Temporary Protection, https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/temporary-protection_en

2.4. The term persecution is only defined by European law

The Council of the European Union defines acts of persecution as follows (this list is exemplary and not exhaustive), "*any acts of a physical or mental nature, including acts of sexual violence; legal, administrative, police, and / or judicial remedies that are discriminatory or implemented in a discriminatory manner; prosecution or punishment, which are disproportionate or discriminatory; denial of access to justice resulting in disproportionate or discriminatory punishment; prosecution or punishment for the refusal to perform military service in the event of a conflict where the military service would also include crimes or acts falling within the scope of the clauses set out in Article 12; acts directed against a certain gender, or against children*".¹⁵

Article 2 (2) of Directive 2011/95 / EU states that the acts of persecution do not have to be committed only by the state in question, but also acts of persecution committed by non-state actors may qualify under the 1951 Convention as acts of persecution where the state does not want or cannot protect the person requesting refugee status.

In the following, we will enumerate the elements that characterize the concept of persecution, elements not defined by the Convention

2.5. The motivation behind persecution is defined only by European law

The elements of persecution can be caused by the following particularities of the individual: race, religion, nationality, political opinion, or belonging to a particular social group. Any of these elements must be related to the act of persecution. The asylum seeker must prove the existence of at least one of the grounds presented in this section: race, religion, nationality, political opinion and affiliation to a particular social group.

Race: In this situation, elements such as the colour of the skin, the person's ascendancy or the ethnic group to which he belongs apply.

Religion: Elements such as the beliefs of that person, which may be of a theistic, non-theistic or even atheistic nature, are analyzed. It is also checked whether the person has participated in various events, such as worship ceremonies, whether private or public, irrelevant if those people have participated in these events alone or with a bigger group. Elements such as non-participation in certain events, free expressions of religious views, religious acts based on confessional reasons are also taken into account.

Nationality: This concept is not limited to the idea of citizenship or the lack of it, but rather it includes the aspect of belonging that we will detail below.

Political opinion may also be a basis for obtaining asylum. The term political opinion consists of elements such as ideas, beliefs, opinions in a certain area.

Affiliation to a particular social group is another element. The definition of this concept was made by the Council of the European Union which states that "*individuals can be considered as belonging to a particular social group when sharing an immutable common feature, that is, something inherent in their being or so fundamental to their being that they can not expect to change it, and who have a distinct identity in their country of nationality or the country they live in because they are considered to be different from society*".¹⁶

2.6. Recognising as persecution also the acts directed toward gender and children exist only in European law

A principle that has completed the concept of persecution in the Convention is that which recognizes persecution against a particular gender or against children. This principle (Article 9 (2) (f) was defined in Council Directive 2004/83 / EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons or people who, for other reasons, need international protection.¹⁷

The Convention and EU law have also created a legal framework through which a refugee can lose his right of residence, which we will present in the next part of the study.

2.7. The cessation clause is defined differently in European law

Council Directive 2004/83 / EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals is subject to a change in the exclusion clause. The Convention specifies that it will apply to "*any person*" who meets one of the following conditions:

- urges once again, without being forced, the protection of their country of nationality;
- if the person has lost his / her nationality but still benefits from the protection of the country that granted his / her nationality;
- in the event of unreasonably returning to the state he/she left or outside of which he/she experienced the fear of persecution;
- where the circumstances giving rise to the recognition of that person as a refugee have ceased to

¹⁵ Directiva 2011/95/UE a Parlamentului European și a Consiliului din 13 Decembrie 2011 privind standardele referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de protecție internațională, la un statut uniform pentru refugiați sau pentru persoanele eligibile pentru obținerea de protecție subsidiară și la conținutul protecției acordate (reformare) (<http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32011L0095&from=RO>)

¹⁶ International Justice Resource Center, Asylum and the Rights of Refugees, Overview, <http://www.ijrcenter.org/refugee-law/>

¹⁷ Directiva 2004/83/CE a Consiliului din 29 Aprilie 2004 privind standardele minime referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de statutul de refugiat sau persoanele care, din alte motive, au nevoie de protecția internațională și referitoare la conținutul protecției acordate, Jurnalul Oficial al Uniunii Europene, <http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32004L0083&from=RO>

exist, the person concerned may no longer refuse the protection of the country of which he is a national;

On the other hand, European law maintains all the criteria outlined above, but changes the starting formula, meaning the beneficiary of the cessation clause. Thus, Article 11 of Directive 2004/83 / EC states in Article 11 that the termination of refugee status occurs for any "*third-country national or stateless person*".¹⁸

2.8. The exclusion clause is defined differently in European law

The Convention defines the exclusion clause in Article 1 F. The legislator explains what type of people are subject to this exclusion clause. Thus, the Convention specifies that these provisions apply to persons where there are good reasons to believe that:

- they have committed crimes against peace, crimes against humanity, war crimes;
- they have committed a serious common law crime, the crime has been committed outside the host country, this being the case before they were admitted as refugees ;
- they are guilty of activities that are committed against the purposes and principles for which the United Nations militates¹⁹;

Council Directive 2004/83 / EC of 29 April 2004 on minimum standards comes with the following additions. Thus, at the first paragraph (*who committed crimes against peace, crimes against humanity, war crimes*) there is a new sentence added to the original text of the Convention : "*in the sense of the international instruments developed to provide for such offenses*"²⁰.

The second paragraph (committed a serious common law crime, the offense was committed outside the host country, this being the case before accepting as a refugee the person concerned²¹) has a new phrase added "the actions particularly cruel, even if they are committed for an allegedly political purpose, can qualify as serious offenses of common law".²² This paragraph also includes the concept of very serious actions, irrelevant of whether they were committed for

a political purpose, they are still likely to qualify as serious offenses of common law.

The third paragraph only has one addition to the original text. It is stated here that acts contrary to the purposes and principles of the UN are also provided in the preamble to the UN Charter and are also found in Articles 1 and 2 of the UN Charter.²³

A new paragraph has been added stating that the paragraph described above also applies to instigators and accomplices: " Paragraph 2 applies to persons who instigate or participate in any way in the offenses or acts referred to in that paragraph"²⁴.

3. Instead of a conclusion

In the present study we have analyzed the concept of refugee from the perspective of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as from the European law perspective: the European Union's Treaties, the Dublin Regulation and numerous directives.

The definition of refugees from the Convention Relating to the Status of Refugees may be supplemented. In our view, other elements could be introduced in the definition given to a refugee and include more reasons which determine a person to flee his country such as: armed conflicts, natural disasters, global warming, genetic mutilation.

We believe that the principle of subsidiarity and temporary protection were needed in order to offer a wider international protections, since not all asylum seekers are eligible for refugee status, but they are eligible for international protection because their country of origin can not protect them.

The principle of non-refoulement is an essential principle for all asylum seekers who can not return to their country of origin. From our point of view, this principle is the basis of the international protection that a state must offer to the person concerned, it is a vital right, according to all international documents, from the Universal Declaration of Human Rights, to the

¹⁸ Directiva 2004/83/CE a Consiliului din 29 Aprilie 2004 privind standardele minime referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de statutul de refugiat sau persoanele care, din alte motive, au nevoie de protecția internațională și referitoare la conținutul protecției acordate, Jurnalul Oficial al Uniunii Europene , <http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32004L0083&from=RO>

¹⁹ Convention relating to the Status of Refugees, http://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/1951_Convention_ROM.pdf

²⁰ Directiva 2004/83/CE a Consiliului din 29 Aprilie 2004 privind standardele minime referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de statutul de refugiat sau persoanele care, din alte motive, au nevoie de protecția internațională și referitoare la conținutul protecției acordate, Jurnalul Oficial al Uniunii Europene , (<http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32004L0083&from=RO>)

²¹ Directiva 2004/83/CE a Consiliului din 29 Aprilie 2004 privind standardele minime referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de statutul de refugiat sau persoanele care, din alte motive, au nevoie de protecția internațională și referitoare la conținutul protecției acordate, Jurnalul Oficial al Uniunii Europene , <http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32004L0083&from=RO>

²² idem

²³ idem

²⁴ Directiva 2004/83/CE a Consiliului din 29 Aprilie 2004 privind standardele minime referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de statutul de refugiat sau persoanele care, din alte motive, au nevoie de protecția internațională și referitoare la conținutul protecției acordate, Jurnalul Oficial al Uniunii Europene, <http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32004L0083&from=RO>

Treaties of the European Union, the European Convention on Human Rights, etc.

We applaud the introduction of the definition of persecution in European law as well as the recognition of specific acts towards gender or children as a form of persecution.

In our view people who receive requests for international protection and who have the capacity to decide on asylum applications must meet certain conditions. These people need to know both the Convention and the European legislation on asylum, they must be people of good faith, tolerant and they should not discriminate in any way.

We conclude by stating that although the 1951 Convention and its 1967 Protocol were visionary treaties for the era in which they were adopted, times have changed and they are barely able to respond now to current needs. Although European law comes with additions, it still does not offer a complete and homogeneous vision, determined inter alia by the lack of interstate solidarity. And with regard to the applicable sanctions for non-compliance with the legislation, the sanctioning regime has proven to be sometimes ineffective.

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- Directiva 2011/95/UE a Parlamentului European și a Consiliului din 13 Decembrie 2011 privind standardele referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de protecție internațională, la un statut uniform pentru refugiați sau pentru persoanele eligibile pentru obținerea de protecție subsidiară și la conținutul protecției acordate (reformare) (<http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32011L0095&from=RO>)
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