

RECENT CHANGES TO THE RULES GOVERNING THE LEGAL STATUS OF FOREIGN NATIONALS IN ROMANIA

Monica-Florentina POPA *

Abstract

The past decade has seen an unprecedented surge in the number of people leaving their home countries in search of economic prosperity, freedom, happiness etc., and settling – permanently or temporarily – on the territory of another state. The rights and obligations of these foreign nationals (or “third-country nationals” in EU legal jargon) define their legal status and constitute – in the case of European Union – a matter that concerns both the Union and its member states.

The present article endeavors a brief analysis of the recent changes to the main statutory instruments governing the legal status of foreign nationals in Romania, introduced mainly due to necessity of implementing various EU regulations into domestic law. The analysis will not be limited to a strictly legalistic approach, recent national and international political and economic trends will also be taken into consideration to better explain law in context.

Keywords: *third-country nationals (TCN), rights and obligations, long-term resident status, immigration, EU Directive*

Introduction

Keeping abreast of new legislation is a must in our legal profession, if jurists forget it, than our clients will definitely remind us of this necessity in a heartbeat. But keeping up to date in our Romanian legal system with such a high turnover of government emergency ordinances, government decrees, acts of Parliament, binding Constitutional Court decisions etc., is sometimes a very challenging undertaking, recently complicated by the ambitious replacement within a span of less than three years of all four “pillars” on which our legal system is built: the civil code, the criminal code, the civil procedure code and the criminal procedure code¹.

Though the New Civil Code (hereinafter referred to as NCC) was designed to bring together all legal norms pertaining to our private law, including those related to the private international law, there is much relevant legislation that did not make it into this monumental codification of 2664 articles. The legal status of aliens, otherwise known as third-country nationals (for brevity purposes hereinafter also referred to as TCN), viewed traditionally as part of the Romanian private international law, has been left outside the scope of the codification and continues to be governed by the Government Emergency Ordinance (recast) no. 194/2002². Other important statutory instruments relating to issues such as asylum seekers rights, working rights etc., enlarge the framework pertaining to the legal status of TCN.

* PhD, MBA, Attorney-at-law, Bucharest Chamber of Lawyers (e-mail: monica.popa@univnt.ro.).

¹ The (New) Civil Code, adopted by Law no. 287/2009 concerning the Civil Code, re-published in the Official Journal of Romania no. 409/10.06.2011, Part I, entered into force on **October, 1st, 2011**; The (New) Civil Procedure Code, published in the Official Journal of Romania no. 465/15.07.2010, Part I, as Law no. 134/2010, entered into force on **February 15th, 2013**; The (New) Criminal Procedure Code, published in the Official Journal of Romania no. 486/15.07.2010, entered into force on **February 1st, 2014**, together with The (New) Criminal Code, published as Law no. 286/2009 in the Official Journal of Romania no. 510/24.07.2009. All four codes were amended several times after their first publication.

² Second recast published in the Official Journal of Romania no. 421/05.06.2008.

The TCN legal status has been under constant review, due to the necessity of harmonizing domestic legislation with the EU binding regulations. The Government Emergency Ordinance (GEO) no. 194/2002 was revised periodically to comply with the EU law, three of these recent changes taking place within a period of less than a year.

The purpose of this article is to highlight and analyze the recent changes introduced into our domestic law in connection with the relevant EU legislation, with references (whenever possible) to court decisions and other relevant jurisprudence. One consequence of the introduction of the new codes seems to be that little attention is currently been paid to other equally important aspects of law, which are now beginning to reemerge due to various external factors, such as the European policies aimed at fostering economic growth, debates within the EU over the liberalization of the employment market for Bulgarian and Romanian nationals, international events that took place in the vicinity of our borders in Ukraine etc., but also due to internal factors, such as changes taking place in the economic and social conditions in Romania.

This article is divided in *four sections*, as follows: (1) a brief presentation of the relevant facts that underline the legislation in this subject-matter; (2) an overview of the legal framework on the status of TCN in Romania; (3) an outline of the most recent changes to the rules governing this status and a short review of the relevant court cases decided in the recent years and (4) concluding remarks.

We hope that this article could sparkle an interest in this often overlooked legal topic, by integrating the recent legal changes to the status of TCN into a broader framework, and thus providing a useful insight that invites additional research, especially in relation to future EU draft legislation proposals that will ultimately impact our national law.

1. The third-country nationals' status – why does it matter?

In our opinion, this is a (rarely asked aloud, but often thought of) question that one should always address when teaching private international law to fourth-year students or when one is confronted with the argument that today we suffer from overregulation. This is the perfect time when the dry “legalese”³ should give way to down-to-earth questions like: “do any of you employ a housemaid from Philippines?”, “when is the last time you have shopped at the *Red Dragon*”⁴”, “do you think we should let Chinese workers help us build our roads?”, and the list can go on. And, of course, one should also hint that all the categories mentioned above make great potential clients for earnest and dedicated lawyers. These questions highlight the changes that took place in our economic and social environment since 2007, when Romania became a full member of the EU.

It is a very rare occurrence when law precedes facts. In issues related to immigration and TCN rights and obligations, facts should be evaluated first, to better understand the law, or – in other words – it is always a good idea to put law into context.

After the fall of the Iron Curtain in 1989, Romania was for more than a decade a country that mainly exported immigration. Many of our countrymen have left for Spain, Italy or Germany, to name the most popular destinations, in pursuit of a better life. In fact, according to official statistics⁵, from 1989 to 2012 the population of Romania has decreased

³ “Legalese” is defined as “the conventional language in which legal documents, etc., are written”, according to Collins English Dictionary, 3rd ed., HarperCollins Publishers, Glasgow, 1992.

⁴ *Dragonul Roșu (The Red Dragon)* is a famous commercial complex on the outskirts of Bucharest, founded and run by Chinese businesspeople. It regularly makes headlines in the media when the Internal Revenue Authorities (*Garda financiară*) apply sanctions in a commendable attempt to stop tax evasion in this complex.

⁵ Data provided by *Institutul Național de Statistică (The National Statistics Institute)* in its recent report available online at: <http://www.insse.ro/cms/files/publicatii/pliante%20statistice/Migratia%20internationala%20a%20Romaniei.pdf>

by more than 3.1 million people, counting 20.01 million inhabitants as of January, 1st, 2013. According to the same source, the migration of resident Romanians to other states contributed in excess of 77% to this dramatic population decrease. This situation created shortages of labour and is predicted to cause increasing strain on our underfunded social security system, because the overwhelming majority of those who have left represent active working population. The unfortunate consequences of this international migration taking its toll on our healthcare systems have been echoed recently in the international media⁶.

This data highlights the need to compensate the shortages of labour by adequate measures, such as making sustained efforts to attract regulated (legal) immigration. Because of our accession to EU in 2007, the nature of immigration to Romania has changed, our country becoming ever more not just a transit point, but also a country of destination for international migration.

According to one of the few existing studies on immigration to Romania, the extent of this phenomenon was relatively modest a decade ago, the immigrants - mostly males - coming from Egypt, Jordan, Syria, China, Turkey and the Republic of Moldova, mainly for studies or business investment purposes⁷. After 2007, there has been a shift in the pattern of immigration, most migrants coming to Romania either for family reunification, studies or for employment purposes, and significantly fewer coming here for investment purposes.

The OECD 2013 Report on immigration⁸ also gives an insight into the changing nature of immigration to Romania, by noting that the number of asylum seekers for the first five month of 2012 has increased by 166% compared to the same period in 2011, but that the absolute numbers remain low. The OECD Report credits the legislative changes undertook in 2011 by the Romanian government with the increase in the number of asylum seekers. Other measures to ensure the legal stay of the immigrants were adopted as well, such as an informative campaign on the risk of illegal employment, free hotline to report undeclared (illegal) work, new social integration measures involving a training program for 20 Romanian language teachers, trained to teach Romanian to asylum seekers (in 2011 there were actually 300 beneficiaries of this program).

Though the term of “third-country nationals” generally refers to both economic migrants and asylum seekers and their respective families, the present article is focused primarily on those holding or applying for a long-term residence permit, due to the fact that they constitute the overwhelming majority of the total immigrants to Romania and hence most of the court cases decided in the recent years concern this category.

According to official data compiled by the Romanian Inspectorate for Immigration (*Inspectoratul General pentru Imigrări*), the number of foreign nationals legally residing in Romania as of June 2012 was slightly over 100,000 people, out of which 57,259 were third country nationals and 42,953 were from another EU state⁹. The biggest category of third-country nationals coming to Romania was represented by those with family ties to a Romanian citizen, followed by those holding a long stay residence permit and by those who came to study in Romania. Only 9% of the legally residing third country nationals came for employment purposes, in stark contrast with the official goals stated by the Government through the relatively unknown National Strategy for Immigration¹⁰, adopted in 2011, to

⁶ “Romanians despair that wealthy Britain is taking all their doctors”, by James Fontanella-Khan, Financial Times online edition, available at: <http://www.ft.com/cms/s/0/f4c0b734-7c70-11e3-b514-00144feabdc0.html#ixzz2vtWPX4eC>

⁷ “Study on immigration to Romania. The integration of foreigners into Romanian society” (Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească), report coordinated by Iris Alexe & Bogdan Păunescu”, p. 24-25, available online at: http://ec.europa.eu/ewsi/UDRW/images/items/docl_20205_22190363.pdf

⁸ *International Migration Outlook 2013*, p. 290, available online at <http://www.oecd.org/els/mig/imo2013.htm>

⁹ Buletin statistic în domeniul imigrației și azilului, semestrul I, 2012, (“Statistics on immigration and asylum, Semester I, 2012”), p. 8-10, available online at <http://ori.mai.gov.ro/api/media/userfiles/analiza%20statistica%20sem%20I.pdf>

¹⁰ *Strategia Națională pentru Imigrație 2011-2014*, adopted by Government Decree (HG) no. 498/2011, published in the Official Journal of Romania no. 391 from 03/06/2011.

regulate and encourage legal immigration as a tool to benefit the economy and to replace the shortage of labour in key areas of our economy.

The goals on paper, good as they may sound, are implemented by the annual adoption through a Government Decree of an Action Plan for the Implementation of the above-mentioned Strategy. The Government Decree also sets the number of work permits to be issued every year and, because of the economic downturn, these have been kept at 5,500 for the past three years.

2. Brief overview of the legal framework on the status of TCN in Romania

2.1. Domestic and European law

The immigration phenomenon brings forth a host of legal challenges and opportunities related to the rights and obligations of the foreign nationals residing in Romania. These aspects are not new to the Romanian legal system, the status of foreign nationals has been an object of legislation ever since the 18th century¹¹.

At present, the notion of “*foreign nationals*” designates¹² - according to art. 2 of GOE no. 194/2002 - the person who does not hold the Romanian citizenship or the citizenship of another European Union member state or of a state belonging to the European Economic Area¹³ or the citizenship of the Swiss Confederation. The *status of foreign nationals* is consensually defined by our doctrine as the totality of legal rules that refer to the rights and obligations of the foreign nationals in our country¹⁴. The legal sources of these rules are both internal and external (international).

The general protection of foreign nationals’ person and possessions is enshrined as a constitutional principle by art. 18 s. (1) of the Romanian Constitution and is subsequently detailed in the main statutory act regarding the foreign nationals, GOE no. 194/2002. The asylum seekers status is governed by the Law no. 122/2006¹⁵, which takes precedence over the GOE no. 194/2002, with the exception of those situations pertaining to the public policy and national security¹⁶. The social integration of the foreign nationals is regulated by the Government Ordinance no. 44/2004¹⁷ and the employment and posting of foreign nationals in Romania are subject to the provisions of the Government Emergency Ordinance no. 56/2007¹⁸. These acts should be construed in conjunction with the *National Strategy for Immigration for 2011-2014*, mentioned in section 1 of this paper. As indicated before, these acts were constantly amended, in order to keep up with the relevant EU law in this area. In addition to these acts, there are other TCN aspects regulated by important statutory instruments: the articles 1083-1086 of the (new) Civil Procedure Code deal with the procedural rights of the TCNs in a civil suit, stating, among other things, that the foreign individuals and the foreign legal persons (“*persoane juridice*”) have – with respect to the proceedings conducted in a Romanian court - the same procedural rights and obligations as

¹¹ For a brief overview of the transformations in the legal status of foreigners in Romania, see Ion P. Filipescu, Andrei I. Filipescu, “*Tratat de drept internațional privat*” (*Treatise on Private International Law*), ed. Universul Juridic, Bucharest, 2007, p. 174-175.

¹² All quotes from GOE no. 194/2002 in this article are based on the electronic version of the act, maintained by Indaco Systems SRL.

¹³ EEA comprises 27 EU member states plus Iceland, Lichtenstein and Norway.

¹⁴ Dan Lupașcu, Diana Ungureanu, *Drept internațional privat*, (*Private International Law*), ed. Universul Juridic, Bucharest, 2012, p. 447-448; Dragoș-Alexandru Sitaru, *Drept internațional privat* (*Private International Law*), ed. C.H. BECK, Bucharest, 2013, p. 27-28; Ion P. Filipescu, Andrei I. Filipescu, *idem* 12, p. 199.

¹⁵ Published in the Official Journal of Romania no. 428 from 18/05/2006, with subsequent modifications.

¹⁶ Dan Lupașcu, Diana Ungureanu, *idem* 15, p. 491.

¹⁷ Published in the Official Journal of Romania no. 93 from 31/01/2004, with subsequent modifications.

¹⁸ Published in the Official Journal of Romania no. 424 from 26/06/2007, with subsequent modifications.

the Romanian citizens and the Romanian legal entities¹⁹. There is another part of legislation that is of utmost importance to the status of TCN, especially when decisions to grant a long-term resident status are to be made by the relevant authorities – the legislation regarding the national security (“*siguranța națională*”, expression replaced with “*securitate națională*” by the latest amendment to the law in 2013). In the past five years, many a Court of Appeal and Supreme Court decisions had to deal with this particular aspect in relation to foreign nationals, as will be outlined in section 3. The main statutory instruments that regulate these aspects are: the Law no. 51/1991 concerning the national security of Romania²⁰, the Law no. 535/2009 concerning the prevention of terrorism²¹ and the Law no. 182/2002 concerning the classified information²². In its capacity of both EU and NATO member, Romania has assumed the obligation to strengthen its borders and combat terrorism, a particular sensitive task since its geographical position puts it on the transit route for illegal immigration from the Middle East and its pre 1989 history of close ties with many Middle Eastern countries that are now involved in various regional crisis or conflicts had resulted in a relatively high proportion of TCNs from these states.

All of the above mentioned legislation is, in fact, a transposition of the European law. The main external legal sources defining the status of TCN in Romania are, of course, the EU directives and regulations, in addition to covenants of the European Convention for the Protection of Human Rights and the Charter of Fundamental Rights of the European Union, which has become binding on all EU member states with the coming into force of the Lisbon Treaty on the 1st December 2009.

For the past 10 years, the EU legislation has been geared to ensure greater equality between third country nationals and the citizens of the EU, to foster a common stance on immigration between member states by promoting legal (regulated) migration and to facilitate the social integration of these TCNs in their host countries. Perhaps one of the most important pieces of legislation in this respect has been the Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents, amended by the Directive 2011/51/EU of the European Parliament and of the Council to extend its scope to beneficiaries of international protection²³.

Other significant developments to the rights of TCNs were brought by the Directive 2011/98/EU (otherwise known as *Single Permit Directive*), which defines a common set of rights to legally residing TCNs workers, with the explicit intention - as stated in the art. (19) of its Preamble - to narrow down the rights gap between citizens of the Union and such foreign nationals, in order to prevent the possible exploitation of the latter and to recognize the important contribution these workers bring to the economic development of their host countries²⁴. Council Directive 2003/86/EC on the rights to family reunification²⁵ has played a significant role in facilitating the integration of TCNs, by protecting the family unit and harmonizing the national legislation of EU member states (although Ireland, Denmark and United Kingdom opted out of this Directive).

Consistent with its long-term goal to gain valuable work force to aid the economy and increase competitiveness and productivity, the EU also passed legislation aimed at attracting highly qualified TCN workers, namely the Council Directive 2009/50/EC on the conditions of

¹⁹ Art. 1083 from the (New) Civil Procedure Code, published in the Official Journal of Romania no. 465/15.07.2010, quoted from “*The Code of Civil Procedure*”, edition coordinated by dr. Viorel Mihai Ciobanu, ed. C.H.Beck, no.500, Bucharest 2013, p.337-358.

²⁰ Published in the Official Journal of Romania no. 163 from 07/08/1991, with subsequent modifications.

²¹ Published in the Official Journal of Romania no. 1161 from 08/12/2009, with subsequent modifications.

²² Published in the Official Journal of Romania no. 248 from 12/04/2002, with subsequent modifications.

²³ Directive 2003/109/EC was published in the OJ L 16 from 23/01/2004; Directive 2011/51/EU published in OJ L 132 from 19/05/2011.

²⁴ Published in the OJ L 343 from 23/12/2011.

²⁵ Published in the OJ L 251 from 03/10/2003.

entry and residence for the purposes of highly qualified employment (the so-called *Blue Card Directive*)²⁶. In the area of refugees and asylum seekers, the legal framework has been defined by the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers²⁷, the Council Directive 2004/83/EC on minimum standards of qualification and status of third-country nationals or stateless persons as refugees or as persons as otherwise need international protection and the content of the protection granted²⁸, the Council Directive 2008/115/EC on common standards and procedures in member states for returning illegally staying third-country nationals²⁹ (the so-called *Return Directive*), etc.

The European Commission constantly monitors the progress in the transposition of these directives and the degree their goals have been achieved in practice – sometimes with mixed results³⁰. In Romania, the latest efforts to transpose such EU directives have resulted in the repeated amendment in 2013 of the GOE no. 194/2002, concerning the status of TCN, and of the Law no. 122/2006 concerning the asylum seekers, on the issue of the rights of legally residing third-country nationals to acquire long-term residence.

2.2. The status of TCNs according to the Romanian law

Enshrined in the Romanian Constitution and reiterated by art. 3 s. (1) of the GEO no. 194/2002, the rights of the third-country nationals in Romania include not only the fundamental rights that all Romanian citizens enjoy (the right to life and to the integrity of person, the right to liberty and security of person, the right to the freedom of religion, the right to respect for his or her private and family life, etc.), but also other categories of civil rights. Third country nationals, legally residing in Romania, have the right to established their residence or domicile anywhere on the Romanian territory, while those with residence or domicile in Romania can enjoy social protection measures from the Romanian state, under the same conditions as the nationals themselves – article 3 s.(3) - (4) GEO no. 194/2002.

The rights of TCNs are differentiated according to categories, the holders of a long-term residence permit enjoying extended rights, similar to those of the nationals³¹, such as: access to employment and self-employment activities - provided such activities do not entail the exercise of public authority, educational and vocational training, recognition of professional diplomas, certificates and other qualifications, social security, social assistance and social protection, tax benefits, the freedom of association and affiliation to a professional organisation or union, access to goods and services made available to the public. Additional rights are granted by other statutory provisions, such as: the right to obtain, if certain conditions are met, the Romanian citizenship, the right to social and economic integration, etc.³² The most important limitations to these rights are set in the domain of political rights, third-country nationals being precluded from founding, joining or financing political parties, participating in the national election processes or exercising a position that entails the exercise of public authority.

²⁶ Published in the OJ L 155 from 18/06/2009.

²⁷ Published in the OJ L 31 from 06/02/2003.

²⁸ Published in OJ L 304 from 30/09/2004.

²⁹ Published in OJ L 348 from 24/12/2008.

³⁰ Latest efforts to evaluate the impact of directives in practice are mentioned in the “4th Annual Report on Immigration and Asylum (2012) {SWD (2013) 210 final}, as set forth in the “Communication from the Commission to the European Parliament and the Council”, available online at <http://ec.europa.eu>. An informative collection of studies on the impact of the EU Directives concerning immigration in practice, in various EU countries, could be found in the *Integration for Third-Country Nationals in the European Union: The Equality Challenge*”, coordinated by Sonia Morano-Foadi, Micaela Malena (eds.), Edward Elgar Publishing Ltd., UK, 2012.

³¹ According to art. 75 (“Equal Treatment”) from GOE no. 194/2002, which is the Romanian transposition of art. 11 of the Council Directive 2003/109/CE. All quotes from the EU or Council Directives in this paper are from the .html version of the texts, available at: <http://eur-lex.europa.eu>.

³² Dan Lupaşcu, Diana Ungureanu, idem 15, p. 492.

Correlative obligations to these rights are set out for all categories of third-country nationals under article 4 s. (1) of the GEO no. 194/2002 - both general obligations, that apply to nationals and TCNs alike, such as the general obligation to comply with the Romanian law and the obligation not to engage in activities which might represent a threat to the public policy and public security, and specific ones, such as the obligation to respect the original purpose for which they have been given permission to entry the country, to register their stay with the relevant Romanian authority upon their arrival in Romania, to declare any change in their personal status or in their employment status with the Romanian Inspectorate for Immigration (*Inspectoratul General pentru Imigrări*), the relevant authority in immigration matters, etc. Another limitation that differentiates the status of various categories of TCNs refers to the access to employment, based on the issuing of a work permit (*“autorizație de muncă”*) which should be requested by the private person or company wishing to employ a TCN. Article (5) s.(a)-(h) of GOE no. 56/2007 exempts some categories of TCNs from the obligation to acquire this work permit: the holders of a long-term residence permit - s. (a), those whose access to employment is stipulated by bilateral agreements between Romania and third countries - s. (b), the beneficiaries of protection in accordance with the national law - s. (c), the third-country nationals undertaking research, teaching, scientific activities or other temporary activities for a relevant national institution, based on bilateral agreements with third countries - s.(d), third-country nationals that are to undertake temporary activities for a Romanian local or central authority – s. 5 (e), the TCNs who are posted for as long as they are posted - s. (f), the family members of the Romanian citizens - s. (g), the intra-corporate transferees of the legal bodies with their registered place of business in one of the European Union member states or of the European Economic Area – s. (h).

It should be noted that the EU Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State expands the protection of the TCNs with the right to equal treatment in the fields specified by the Directive, that “should be granted not only to those who have been admitted to Member State to work but also to those who have been admitted for other purposes and have been given access to labour market of that Member State in accordance with other provisions of Union or national law” (article 20 from the Preamble). These rights have been specified in article 12 (*Right to equal treatment*) of the above-mentioned Directive and are essentially the same as those granted to long-term residents, under the provisions of Council Directive 2003/109/CE, as amended by EU Directive 2011/51/EU.

The national legal framework is still a work in progress, driven by the necessity to further amend the legislation to minimize the differences of status between the third-country nationals holding a long-term residence permit and those holding a temporary residence permit in relation to access to employment³³, “irrespective of the initial purpose of or basis for admission” (art. 20 from the Preamble of the EU Directive 2011/98/EU), in order to comply with the EU relevant legislation.

3. An outline of the most recent changes to rules governing the status of TCNs

The most recent changes to the national legislation in this subject-matter were introduced by the Law no. 376/2013³⁴, with respect to the provisions governing the status of foreign nationals and to those governing the status of the asylum seekers, in order to transpose

³³ See note 32 above.

³⁴ Published in the Official Journal of Romania no. 826 from 23/12/2013.

the EU Directive 2011/51/UE which extends the scope of Council Directive 2003/109/EC to beneficiaries of international protection.

The modifications concern terminology, substance and procedure (the latter referring to the format and additional information to be inserted in the permits issued to the beneficiaries of international protection). Throughout the GEO no. 194/2002, the notions of “refugees” and “asylum seekers” have been replaced with the broader notions of “beneficiaries of (or applicants for) international protection” or “beneficiaries of (or applicants for) national protection, other than international protection”. The aim of these changes in line with the EU Directive has been to extend the benefits of long-term resident status to disadvantaged categories, such as refugees, asylum seekers, or other assimilated categories qualifying for protection under EU law or under national law. As the article 2 and article 3 from the Preamble of the EU Directive state “the prospect of obtaining long-term resident status in a Member State after a certain time is an important element for the full integration of beneficiaries of international protection in the Member State of residence.” “Long term resident status for beneficiaries of international protection is also important in promoting economic and social cohesion, which is a fundamental objective of the Union as stated in the Treaty on the Functioning of the European Union”.

In Romania, the acquiring of a long-term residence permit is for most TCNs an intermediary (and necessary) stage in the process of applying for Romanian citizenship. As such and with regard to the implications which the granting of such a status to a foreign national will have, the legal conditions under which a TCN can obtain long-term residence in Romania are stricter than those for other categories of foreign nationals. If requested, the status of long-term resident is granted, according to article 70 s. (1) of the GEO no. 194/2002, to those entitled to the right of temporary stay (received when legally entering the country with a long-stay visa or if they fall into a visa-exempt category) or to the beneficiaries of international protection.

An adjustment of the law has been made in article 70 s (1) with the clarification of the specific moment when the applicants for long-term resident status must hold the right of temporary stay or benefit from international protection, namely the moment when a decision concerning the application for said status has been made by the relevant authority, eliminating the previous reference to the moment when such a application has been lodged. Changes have been made to the conditions that a foreign national must meet in order to be granted long-term residence, so they become applicable to the beneficiaries of international protection as well. The general conditions that must be cumulatively met by the categories mentioned in article 70 s. (1) are: the applicant must be a beneficiary of a right to temporary stay or of international protection and must have resided legally and continuously on Romanian territory for five years immediately prior to the submission of the application; the applicant must provide evidence that has stable resources to maintain himself/herself, with the exception of the family members of a Romanian citizen; the applicant must provide evidence of social security and of appropriate accommodation; the applicant must possess reasonable knowledge of the Romanian language; the applicant does not represent a threat to the public policy and national security (according to article 71 s.1).

Among other newly introduced changes to the provisions of GEO no.194/2002, the ones regarding the removal procedures of the beneficiaries of international protection, in case such protection has been revoked or lost, should also be mentioned. Correlative adjustments have been effected to the Law no. 122/2002, so as to define the “international protection” as including the refugee status or other status offered by way of subsidiary protection³⁵. The Romanian state offers immediate readmission on its territory to the beneficiaries of

³⁵ Idem 35.

international protection and their family members, if there has been a decision taken by another Member State to remove them from its territory, if they held long-term resident status in that Member State.

The GOE no. 194/2002 has been modified two more time in 2013, through Law no. 158/2013³⁶, which introduced specific regulations as to the obligations of the foreigners hosted in refugee and immigration centers (such as the obligation to submit to fingerprinting and health examination, the obligation to conform to the administrative schedule of the center, the obligation to refrain from consuming alcohol or other intoxicating substances etc.), and through GEO no.109/2013³⁷, which instituted travel facilities for third-country nationals in possession of an multiple-entry uniform visa issued by a Schengen Member State.

The process of clarification of the status of TCN has been taken place not only with regard to the legislation, but also with regard to the court jurisprudence, in particular with regard to the instances when the long-term resident status has been refused on grounds of national security. Many a case have been brought for review by the Supreme Court of Justice by disgruntled foreign nationals, that have been deemed a national security threat by the relevant public authority, i.e. MAI (*Internal Affairs Ministry*), in collaboration with other public authorities with prerogatives in matters of national security (such as SRI – *Romanian Information Agency*).

For instance, in the *ICCJ (Supreme Court)*, Fiscal and Administrative Chamber, *Decision no. 258 from 18/01/2013*, the Supreme Court upheld the ruling passed by the Court of Appeal, which has material jurisdiction in cases relating to the status of TCNs, to declare undesirable and to take into custody four Chinese nationals on grounds of national security. The Supreme Court decided that the defense based on the fact that no criminal proceedings have been started with respect to these nationals and the fact that they have been legally residing in Romania for the past 20 years does not void or mitigate the evidence presented by the relevant authorities against them³⁸. In the *ICCJ (Supreme Court)*, Fiscal and Administrative Chamber, *Decision no. 3949 from 04/10/2012*, the Supreme Court upheld the ruling of the Court of Appeal to refuse the long-term residency status to a Turkish national, married to a Romanian citizen and legally residing for the past 15 years, on grounds of national security. The defense invoked by the plaintiff, namely that for the past 15 years he had been the beneficiary of temporary residence, granted only to those who did not pose a threat to public policy or national security, has been rejected, the Supreme Court pointing out that the conditions for granting and renewing the temporary residence and those for long-term residence (article 71 from GOE 194/2002) may be similar, but not identical, in the latter case the compliance with these conditions must be stricter, to mirror the benefits conferred by the long-term resident status.

Though not binding, the jurisprudence of the Supreme Court is highly persuasive. There seems to be a consensus as to the interpretation of the conditions under which a decision of taking into custody and subsequent removal from the Romanian territory can be granted, with respect to the relevant ECHR (*European Convention of Human Rights*) principles and jurisprudence of the European Court of Human Rights. One of the most frequently invoked arguments by the plaintiffs accused of being a threat to the national security is the infringement of the article 6 (*the right to a fair trial*) and article 8 (*the right to respect for private and family life*) of the ECHR. A careful examination of these objections has been undertaken by the Supreme Court in *ICCJ (Supreme Court)*, Fiscal and Administrative Chamber, *Decision no. 5747 from 29/11/2011*, which upheld the ruling of the

³⁶ Published in the Official Journal of Romania no. 280 from 17/05/2013.

³⁷ Published in the Official Journal of Romania no. 796 from 17/12.2013.

³⁸ The Supreme Court Decisions in this paper quoted in this paper are available at www.legalis.ro, unless otherwise stated.

Court of Appeal to take into custody and subsequently remove from the national territory a legally residing Egyptian national, suspect of engaging in terrorist activities.

The jurisprudence of the Romanian courts regarding the status of TCN is not limited to cases similar to those discussed above. For instance, the Court of Appeal Bucharest has ruled in *The Civil Decision no. 4644 from 05/07/2011* that the conditions for renewing the right to temporary residence are not met, when the plaintiff - a Moldavian national married to a Romanian citizen - failed to provide convincing evidence of appropriate accommodation, submitting a bailment contract for a property where another 930 persons (!) were already registered with bailment contracts.

4. Conclusions

The status of TCN will continue to be amended in the near future, due to the necessity of transposing the EU law into the national legal framework. In this context, it should be noted that there is, until now, no reference to the transposition of the Single Permit Directive (Directive 2011/98/EU) into the national legislation. The GEO no. 56/2007 concerning the employment and posting of foreign nationals in Romania should be reviewed in accordance with this Directive. Due to the many changes to the GEO no. 194/2002, it should be perhaps advisable if a second recast of this act could be envisaged by the relevant authorities.

Given the aims of the European and national policies on immigration of addressing labour market shortages, spurring investment and becoming more economically competitive, the Romanian authorities should perhaps take a greater interest in the proposed EU draft legislation, namely the *Intra-Corporate Transferees Directive* and, even more importantly for our country, the *Seasonal Workers Directive*. For an effective way to combat the shortage of labour and its ensuing consequences, we need more legal instruments in addition to a well meaning, but relatively unknown *National Strategy for Immigration*. As highlighted in the first part of this paper, there is a need to attract both blue collar workers and skilled workers in the healthcare system, industry and agriculture, and the quota of 5500 work permits for 2014 seems insufficient for achieving such lofty goals.

The immigration problems and the status of third-country nationals will only continue to grow in importance in the coming years. More in-depth analysis of the appropriate legal and public policy measures are therefore necessary and should attract more attention from both jurists and laymen. We hope that this paper could contribute to a better understanding of the legal framework and its underlying facts with respect to foreign nationals in Romania.

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