

# THE LEGAL REGIME OF THE FOREIGNERS WHO CLAIM FOR A FORM OF PROTECTION IN ROMANIA

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Law no. 122/2006 concerning the asylum in Romania<sup>1</sup> establishes the legal system of foreigners who ask for a form of protection in Romania, the legal system of foreigners who benefit of a form of protection in Romania, the granting, ceasing and annulling procedure of a form of protection in Romania, as well as the procedure for establishing the member state responsible of analyzing the application for asylum.

From the 4<sup>th</sup> of August 2006, the date when Law no.122/2006 came into force, Romanian legislation on asylum uses uniform terms and expressions from European law, as: application for asylum, asylum applicant, asylum procedure, subsidiary protection etc. Romanian law transposes the Council Directives no.2001/55/EC, no.2003/9/EC, no.2003/86/EC, no. 2004/83/EC, which establish the minimum standards of temporary protection, minimum standards for receiving the application for asylum, the right to a family re-unification, minimum standards for qualifying and the status of the citizens of third countries or of the stateless persons as refugees or as persons in need of protection and the content of the granted politics.

According to the Romanian law, the application for asylum is the claim formulated by a citizen, foreigner or stateless, in order to obtain protection from the Romanian State.

**I. The forms of protection granted by the Romanian State** are: refugee status, subsidiary protection, temporary protection or temporary humanitarian protection.

A. *The Refugee Status* is a form of protection acknowledged by the Romanian State to the foreign citizen or to the stateless person who fulfils the conditions provided by the Convention on refugees status, concluded in

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<sup>1</sup> Official Gazette no.428 from the 18<sup>th</sup> of May 2006

Geneva on the 28th of July 1951, to which Romania adhered by Law no. 46/1991 on the adhering to the Convention and Protocol concerning the refugees status.

B. *The Subsidiary Protection* is the form of protection granted by the Romanian State to the foreign citizen or to the stateless person who fulfils the conditions for acknowledging the refugee status and to whom there are certain reasons to believe that, in case of returning in the origin country, meaning the country of domicile, will be exposed to a great risk and who cannot or, because of this risk, does not want the protection of that country any more.

By serious risk one can understand:

- a) the conviction to death punishment or the execution of such one
- b) torture, inhuman or degrading treatment or punishments
- c) a serious, individual threaten against life and integrity, as a consequence of violence generalized within internal or international armed conflict situations, if the applicant belongs to the civil population.

C. *Temporary protection* is a procedure having an exceptional character desired to assure the protection, in case of a massive flow or of an imminent massive flow of people displaced from third countries, who cannot return into their country of origin. This form of protection is a temporary and immediate one for the above persons, especially if there is the risk that the asylum system not to be able to process this flow, without contrary effects for its efficient functioning, in the interest of the mentioned persons and of others who need protection.

Massive flow is to be understand as the arrival in the European Union of a great number of displaced persons who come from a specific country or geographic area, no matter if their arrival was spontaneous or helped.

D. *Temporary humanitarian protection* is granted during periods of armed conflicts, in which Romania is not involved, for persons coming from those conflict areas. Temporary humanitarian protection is granted by a Government Decision, elaborated by the Ministry of Administration and Interior, on the proposal of the National Office for Refugees, when it is ascertained or there are information that from the conflict area is to be registered a massive, spontaneous afflux of persons who need protection.

It is considered to be a person that need protection any person who belongs to civil population and left his/her country of origin as a consequence of an armed conflict and cannot go back safely and respectable. The temporary humanitarian protection is granted for a fixed period which should not be longer than 2 years. When this form of protection has ceased, the foreigner can lodge an application for asylum.

## **II. The procedure on granting, ceasing and annulling a form of protection**

The foreigner is considered as applicant for asylum from the moment he/she expresses, orally or in written form, his/her will in front of the competent Romanian authorities. From his/her words it has to result that is requesting for the Romanian State protection. From that moment forward, the asylum seeker benefits by rights and obligation provided by law.

Asylum granting can be done by an ordinary procedure or by an accelerated one.

The accelerated procedure can be released during the ordinary procedure, if the specially designated office worker ascertains that:

- a) the asylum application is groundless;
- b) the foreigner, by his/her activity and affiliation to a certain group, represents a threat for the national security or the public order in Romania;
- c) the foreigner comes from a safety country of origin.

The asylum application of unaccompanied minor cannot be solved by an accelerated procedure. The settlement of the application by an accelerated procedure is done in 3 days' time from its beginning. In case of a rejection decision as being obviously ungrounded, the term for lodging a complaint is of 2 days from communication. The complaint belongs to that court law jurisdiction where there is the competent structure of the National Office for Refugees. The law court gives its verdict, by a motivated decision, within 10 days.

Asylum application lodged at the territorial authorities of the Romanian Customs Police from a border inspection post is sent to the competent structure within the National Office for Refugees, which analyzes it and pronounces a decision within 3 days from the receiving date.

Romanian law establishes the conditions for lodging the access claim to a new asylum procedure and the solutions that can be given by the court in case of appealing. The foreigner has the right to remain on the Romanian territory until court pronouncement. Court decision on foreigner's complaint is irrevocable.

Law no. 122/2006 establishes the procedure of the safe third country, by which the National Office for Refugees can decide foreigner's returning into the safe third country, which he/she has transit formerly and where, he/she has already be given protection without essentially analyzing his/her claim. The National Office for Refugees can also decide to get foreigners back in its country territory whenever Romania is declared, the safe third country for them, by the applicant state.

There are considered to be safe third countries the European Union States, as well as other states established by a Ministry of Administration and Interior order at the proposal of the National Office for Refugees, by respecting the following conditions:

a) applicant's life and liberty is not and will not be threatened in their territories, according to Geneva Convention, art.33;

b) the foreigner does not risk to be put to torture or to inhuman or degrading treatments, in their territory;

c) in the above mentioned countries, the foreigner is actually protected against repatriation, according to Geneva Convention provisions, as well as on the basis of the United Nations High Commissioner for Refugees (UNHCR) reports concerning the application of the repatriation principle.

Since Romania became a member of the European Union, the safe third country procedure is no longer applied for the European Union states or for other states which have come to a special agreement concerning their participation in the mechanism of determining the responsible state. According to this mechanism, an applicant might have the asylum procedure in Romania rejected if, in accordance with the European Union conventions or directives, another state is responsible for examining the asylum application. Romania will apply the provisions of the European Union documents in force, regarding the EURODAC system organizing, for comparing the impresses in order to efficiently implement the European mechanism. When the applicant lodges the asylum application at the National Office for Refugees or its territorial structures, he/she will be informed, in a written form, on the fact that the information concerning his/her application and person, including drawn papillary marks, can be the object of an information interchange among the European Union States or other states which have come to a special agreement concerning their participation in this mechanism having as an exclusive goal the ascertainment of the Member State responsible of analyzing an asylum application. The European Union States use for data transferring secure electronic means, named DubliNet.

The refugee status established by the art.23 or 24 from Law no.122/2006 cease when its beneficiary:

a) has been voluntary reset under the protection of the country whose citizen he/she is, or

b) after losing the citizenship, has voluntary regained it, or

c) has gained a new citizenship and he/she enjoys the protection of the state whose citizen he/she became.

d) has voluntary returned to that country he/she left because of the reasons he/she was granted the refugee status, or

e) can no longer continue to refuse the protection of the country whose citizen he/she is, due to the fact that the reasons for granting the refugee status have ceased to exist and he/she cannot invoke anymore, imperative reasons referring to previous persecutions in order to motivate his/her refusal.

f) being a stateless person, is able to return into the country where he/she used to have his/her domicile, because there are no circumstances to have generated the refugee status.

The subsidiary protection ceases when the circumstances which lead to its granting ceased to exist or changed so much that such form of protection is not necessary any longer.

The refugee status is annulled if:

a) the person to whom the refugee status has been acknowledged, made false statements, omitted to present certain facts or used false documents, which have been decisive for implementing this form of protection and there are no other reasons to request the maintenance of this status.

b) after granting this form of protection, it has been found out that he/she has committed a serious crime of common law or a crime against peace and humanity, a war crime or deeds which are contrary to the goals and principles containing by the United Nations Charter.

The foreigner who remains in the territory of Romania after the form of protection has ceased or has been annulled, has to submit to the legal provisions concerning the foreigners regime in Romania. In order to harmonize the Romanian legislation in the field of asylum to the legislation of other member states of the European Union, Law no.122/2006 on asylum extended the possibility of granting, on request, the refugee status to minors from marriages contracted after entering the Romanian territory, illegitimate ones or adopted by the main beneficiary of the form of protection.

The law concerning the asylum also contains provisions which offer the possibility of family reunification to the beneficiaries of the subsidiary protection or temporary humanitarian protection. There have also been provided stipulations of exclusion from granting any form of protection for the foreigners and stateless persons for whom there are strong motifs to believe they committed a crime against peace and humanity, a war crime or any other crime defined according to the relevant international treaties, to which Romania joined, or have committed a serious crime of common law outside Romania before being accepted on the Romanian territory.

The new law modifies the conditions for lodging a claim to a new asylum procedure and solutions that can be given by the law court in case of appealing. The foreigner who lodges an application for a new asylum procedure has the permission to remain on the Romanian territory during the period his/her application is solved. The border procedure and the accelerated procedure eliminated the possibility of sending the file to the National Office for Refugees in order to be re-analyzed.

The personal status of the foreigner which gained a new form of protection according to the Law concerning asylum in Romania is established by law of the country of origin. Rights deriving from personal status,

previously gained by the foreigner to whom has been granted a form of protection, are acknowledged by the Romanian State.