

Comparative analysis regarding the procedure for granting the refugee statute in Romania and France

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Abstract

Everyday realities demonstrate more and more the fact that there are people who are constraint to leave their countries of origin, as a consequence of dangers of a nature to seriously harm their right to life, liberty or integrity and who are forced to remain for a period of time, or even for the rest of their lives, in the country offering them asylum. From the analysis of the current legal framework in Romania and France, we can state that at the level of the two states there is a tendency to give norms applicable both to the seekers of the refugee status, as well as to asylum-seekers. In spite of the fact that the two notions cannot be confused with one another, their common regulation is the result of the numerous resemblances between the two institutions, such as, most times, the state that recognized the statute of refugee as immediate protection form will also grant the right to asylum as final protection form. Thus, both at the level of Romania, and at the level of France, the two institutions represent humanitarian protection forms for aliens persecuted for their beliefs, opinions or the political belonging or their belonging to a social group, or as a consequence of their race, religion, nationality², which is granted by the state by virtue of its sovereignty. In addition, the Romanian state and the French state undertake to grant similar rights and liberties to the refugees and asylum-seekers, equal to those of their own citizens, out of which stands out the right not to be banished. Following the direction imposed by the U.N. Convention of year 1951, neither Romania, nor France grant the statute of refugee to the alien who committed a crime against peace or mankind, a serious common law offence, outside the state, before being admitted to its territory as a refugee, or facts contrary to the goals and principles stated by the U.N. Charter³. By granting the statute of refugee, the alien receives the permission to stay of the territory of the Romanian, respective French state, he benefits of identity documents, of the right to choose his place of residence and he may even travel freely in the same conditions as the other aliens⁴.

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² Iancu Gheorghe, *Dreptul de azil - Privire comparativă cu statutul juridic al refugiatului*, All Beck Publishing House, Bucharest, 2002, p. 75-76.

³ art. 25 para. 1 of Law no. 122/2006 regarding asylum in Romania.

⁴ Government Expedite Ordinance no. 194/2002 regarding the regime of aliens in Romania and Government Ordinance no. 2004-1248 of November 24th, 2004 regarding the Code of entry and stay of aliens and the right to asylum in France.

Introduction

The discussions on the migration movements, in general, and those regarding refugees, in special, cannot be separated from the problem of human rights, from that of the specific of development of the countries of origin and of the host country, of the problems regarding social cohesion and the protection system of the persons with the statute of refugee and of asylum-seekers.

Romania adhered in year 1991 to the U.N. Convention and Protocol regarding the statute of refugees⁵, which determined major changes in the national legislation in this matter.

At present, the legal framework applicable to the protection of refugees at the level of the Romanian state is represented by Law no. 122/2006 regarding asylum⁶.

France signed the U.N. Convention regarding refugees since year 1951, and in the following year, on the date of April 25th, it adopted Law no. 52-893 regarding the right to asylum and the establishment of the French Office for the Protection of Refugees and Stateless persons, codded and replaced with Government Ordinance no. 2004-1248 of November 24th, 2004, regarding the Code for the entry and stay of aliens and for the right to asylum. An important aspect of the French legislation in the matter is represented by the fact that France recognized the right to asylum through the fundamental law, before adhering to the international instruments in the matter. We are speaking about the Constitution from the date of October 27th, 1946, which, in art.4 of the Preamble was stipulating that any person persecuted as a consequence of „actions in favour of liberty” may request the right of asylum on the territory of France.

1. The procedure of granting the statute of refugee in Romania

The ordinary procedure

In the process of granting the statute of refugee, the highest applicability has the ordinary procedure. According to it, the alien who wishes to be granted the statute of refugee addresses a written or verbal petition either to the Romanian Office for Immigration within the Ministry of Administration and Interior, or to its territorial units. The moment when the applicant can submit the petition varies from the moment when he presented himself to a border control point to moment when he entered the territory of Romania or the moment of occurrence of events in the country of origin of the petitioner who had the right to stay on the territory of Romania. Therefore, a person cannot be considered petitioner for the statute of refugee and cannot benefit of the rights granted on the basis of this statute, except

⁵ Law no. 46/1991 for Romania's accession to the Convention regarding the statute of refugees, as well as to Protocol regarding the statute of refugees, published in the Official Gazette of Romania, Part I, no. 148 from the date of July 17th, 1991.

⁶ Published in the Official Gazette of Romania, Part I, no. 428 of May 18th, 2006, rectified in the Official Gazette of Romania, Part I, no. 68 of January 29th, 2007, modified last through Law no. 280/2010, published, in its turn, in the Official Gazette of Romania, Part I, no. 888 from the date of December 30th, 2010.

as a consequence of his express manifestation of will before the competent authorities. Depending on the authority before which the alien comes, following the application for granting the statute of refugee, he will receive either a temporary certificate that replaces the temporary identity document in Romania, from the territorial bodies of the Ministry of Administration and Interior, or a temporary identity document from the Romanian Office for Immigration. Also, the Romanian Office for Immigration has the possibility to offer the applicant a place of residence and material assistance in the situation when he does not have the necessary material means for survival until the settlement of the petition for granting the statute of refugee.

The application for granting the statute of refugee is solved by the clerks of the Romanian Office for Immigration, especially assigned through order of the manager, within 30 days from the receipt of the application. In interviewing, analyzing the reasons invoked, the Romanian Office for Immigration may collaborate with other national authorities⁷. In the situation when the matter is very complex and requires additional documentation, the term for settling the application is extended with another 30 days.

Following the analysis of the application, the granting of the statute of refugee, the rejection of the application for granting the a statute of refugee, respectively the granting of the subsidiary protection is done through grounded decision of the clerk assigned to solve the matter, which is communicated in writing to the petitioner, either by direct communication by the representatives of the Romanian Office for Immigration, or by mail, sent to the last declared residence of the applicant.

Against the decision adopted by the Romanian Office for Immigration the petitioner has the possibility to lodge a complaint, within 10 days from the communication date. The complaint is submitted to the Romanian Office for Immigration or to its territorial structure which issued the decision and, accompanied by a copy of the decision, is transmitted for settlement to the court in whose territorial area is the competent structure of the Romanian Office for Immigration that solved the case.

Against the court decision, both the applicant, and the Romanian Office for Immigration can declare recourse, within 5 days from its rendering, which is going to be tried within 30 days from registration by the Tribunal in whose circumscription is the court whose decision is challenged, the Administrative contentious section. The complaint, as well as the other acts of procedure regarding its settlement, is exempt from the stamp fee.

⁷ For example, the Ministry of Foreign Affairs supplies periodically or at the request of the Romanian Office for Immigration information related to the real situation existing in the country of origin of the applicants for the statute of refugee, information necessary in the procedure of solving the application for granting this statute.

The accelerated procedure

The accelerated procedure represents a special procedure for granting or rejecting the statute of refugee. This procedure is applicable in the following cases⁸:

- Obviously ungrounded application
- Application submitted by a person who, through his activity or belonging to a certain group, represents a danger for national security or public order in Romania
- Application submitted by a person who comes from a safe country of origin

According to art. 76 of Law no. 122/2006 regarding asylum in Romania, it is considered to be ungrounded the application for granting the statute of refugee submitted by a person who has no real fundament for a fear of persecution in the country of origin or who misleads, deliberately, the bodies with competences in matters of refugees or who abusively resorts, with bad-faith, to the procedure for granting the statute of refugee.

In what concerns the expression „safe country of origin”, these are considered to be the Member States of the European Union, as well as other states expressly stated at the proposal of the Romanian Office for Immigration by order of the minister of administration and interior⁹.

The accelerated procedure for granting or rejecting the statute of refugee follows the same stages as the ordinary procedure, but the solving terms are shorter, respectively of three days after the interview and the analysis of the reasons invoked by the applicant.

The procedure in case of applications for the statute of refugee submitted in the border control points

The petitions for granting the statute of refugee submitted in the border control points are forwarded for settlement to the competent structures of the Romanian Office for Immigration. Within 3 days from receiving the application, after holding the interview and analyzing the reasons invoked by the applicant, the Romanian Office for Immigration clerk will adopt a decision through which he may establish the following¹⁰:

- granting the right to entry on the territory of Romania and a form of final protection
- granting the right to entry on the territory of Romania and to have access to the ordinary procedure for granting the statute of refugee
- rejecting the application as being ungrounded

Also within this procedure, the applicant is entitled to submit a complaint against the decision of the Romanian Office for Immigration, within 2 days since communication. The complaint is submitted to the structure of the Romanian

⁸ art. 75 para. 1 of Law no. 122/2006 regarding asylum in Romania.

⁹ art. 77 para. 1 of Law no. 122/2006 regarding asylum in Romania.

¹⁰ art. 83 para. 1 of Law no. 122/2006 regarding asylum in Romania.

Office for Immigration which issued the decision, which must forward it immediately to the court within whose territorial area it is. The court solves the complaint within 5 days and renders a grounded decision, through which it either rejects the petition as ungrounded, or admits the complaint, ordering that the competent structure of the Romanian Office for Immigration that issued the decision analyze the petition in ordinary procedure and allows the applicant access in the territory. In these latter cases, the court decision is irrevocable, such as the petitioner or the Romanian Office for Immigration cannot declare recourse.

Throughout the procedure, but no more than 20 days, the alien requesting the granting the statute of refugee remains in the transit area, as defined by art. 2 letter n of Law no. 122/2006 regarding asylum in Romania¹¹, having the right to social and legal assistance, humanitarian aid from the non-governmental organizations and the representatives of the United Nations High Commission for Refugees in Romania. Also, the applicant may be housed in special housing centers close by the border control points. After the passing of the term of 20 days, if the application is settled through a final and executor decision, the alien may be allowed entry of the Romanian territory.

2. The procedure of granting the statute of refugee in France

The procedure before the French Office for the Protection of Refugees and Stateless Persons

According to the French legislation in effect, the procedure for granting the statute of refugee starts with the formulation of an application to the competent authorities by the petitioner either at the border, or immediately after access on the French territory, or after a long period of time when he stayed on the French territory. In spite of the fact that the French Office for the Protection of Refugees and Stateless Persons, organized within the Ministry of Foreign Affairs¹², considers the stay on the French territory of a foreign citizen, without requesting a form of protection as also including the absence of persecution in the country of origin, the State Council stipulated that the formulation of the application to grant the statute of refugee by the petitioner who stayed a long period of time on the French territory cannot be rejected through the prism of these considerations.

The applications for granting the statute of refugee are submitted regardless of the procedure used, the ordinary or accelerated procedure, to the prefecture. At that moment, the applicant for the statute of refugee must fill out a form in French, comprising information regarding the date of leaving the country of origin and the date of arriving to France, the itinerary followed from the country of origin to

¹¹ “area located at the border or close by, destined for the stay of the persons who did not receive the approval for entry in the territory, of the means of transport and of the goods, until the establishing of their legal regime upon crossing the state border. In case of international airports, by transit area is understood the area located between the embarking/disembarking point and the places destined for making the control for crossing the border”.

¹² art. 1 the Code of entry and stay of aliens and the right to asylum in France respectively art. L721-1 of the Code of entry and stay of aliens and of the right to asylum in France.

France and the means of transport used, the reasons that determined him to leave the country of origin and to request the statute of refugee, the current address. In addition, the applicant for the statute of refugee will be taken his fingerprints. The petition for granting the statute of refugee together with the form filled out by the applicant and his digital fingerprints will be transmitted to the French Office for the Protection of Refugees and Stateless Persons in view of solving the case by the Director or by the clerk delegated within 6 months for the ordinary procedure, respectively 15 days for the accelerated procedure.

The accelerated procedure is put into application by the French Office for the Protection of Refugees and Stateless Persons in the following three situations:

- the application is submitted by a country that the French Office for the Protection of Refugees and Stateless Persons considers as not presenting a risk of persecution on the citizens or from a country of origin that is on the list of safe countries
- the application is submitted by a person whose presence on the territory of France constitutes a serious threat for public order, public security or state security
- the application is abusively or fraudulently submitted by a person

Before solving the petition, usually, the representatives of the French Office for the Protection of Refugees and Stateless Persons interview the applicants for the statute of refugee in its special locations¹³. The interview takes place in the presence of an officer entrusted with the analysis of the petitioner's file and, in case of need, in the presence of an interpreter made available to the applicant by the French Office for the Protection of Refugees and Stateless Persons. The interview has as main purpose the analysis of the risks to which the applicant for the statute of refugee is subjected in his country of origin.

As exception, the representatives of the French Office for the Protection of Refugees and Stateless Persons may skip the interview stage in the following four cases:

- they are going to accept the petitioner's application on the basis of the knowledge he has
- the application was submitted by a person who comes from a country that the French Office for the Protection of Refugees and Stateless Persons considers as not presenting the risk of persecution on citizens or from a country of origin that is on the list of safe countries, elaborated at the national level
- the elements supplied by the applicant at the moment of drafting the file submitted are certainly ungrounded
- the application is submitted by a person having medical problems

Following the file analysis, respectively the interview, the French Office for the Protection of Refugees and Stateless Persons notifies its decision of refusal or granting the statute of refugee by registered letter, to the address that the applicant indicated in his file, in a language he is presumed to understand. All

¹³ art. 2 para. 2 of Law no. 52-893 regarding the right to asylum in France, respectively art. L723-3 of the Code for entry and stay of aliens and for the right of asylum in France.

decisions for the rejection of the statute of refugee will be motivated de jure and de facto and will expressly indicate the recourse possibilities. In case the French Office for the Protection of Refugees and Stateless Persons does not transmit its decision within 2 months since the expiry of the legal term of 6 months, respectively 15 days, the silence of this authority equals to the refusal to grant the statute of refugee.

In case of being granted the statute of refugee, the applicant will present himself to the prefecture of the place of residence in view of being granted a renewable title of stay, valid for a period of 3 months. In the contrary case, the applicant whose statute of refugee was refused by the French Office for the Protection of Refugees and Stateless Persons has the possibility to notify the National Court for the Right to Asylum, by formulating recourse within 30 days.

The procedure before the National Court for the Right to Asylum

Against the decision to reject the statute of refugee adopted by the French Office for the Protection of Refugees and Stateless Persons, the petitioner has the possibility to lodge a complaint, in the form of recourse, within 30 days since the communication date¹⁴. The complaint is submitted in written form, in the French language, with the Secretariat of the National Court for the Right to Asylum and must be accompanied by the decision of rejection of the statute of refugee or a copy thereof, two recent photographs of the applicant and the residence proof. In what concerns the content of the complaint, it must contain the surname, first name, civil status, profession and domicile of the applicant. In formulating the complaint, the applicant must explain the reasons why he wishes to challenge the decision of the French Office for the Protection of Refugees and Stateless Persons, namely to present the reasons that determined him to leave the country of origin, as well as the persecutions that he was or risks being subjected to. The applicant for the statute of refugee must be very precise in motivating the petition, must invoke personal facts and must avoid general formulations regarding the political situation in the country of origin.

The National Court for the Right to Asylum has the obligation to ensure the contradictory character of the recourse-solving procedure, by means of which to be informed of all notes and elements of the case. In this sense, following the submission of the complaint, the petitioner can be called, at his express request, to a hearing before the National Court for the Right to Asylum, moment when he is given the possibility to verbally present his reasons. It is preferable that the applicant comes before the Court together with an attorney, respectively an interpreter, in case he does not fluently communicate in French. In the contrary case, the recourse will be solved in his absence, which may prove to be damaging for the petitioner. Also, the National Court for the Right to Asylum may refuse to call the applicant for a hearing when the file presents no serious reason for

¹⁴ art. L731-2 of the Code for entry and stay of aliens and for the right of asylum in France.

contesting the decision of the French Office for the Protection of Refugees and Stateless Persons¹⁵.

The complaint against the decision of the French Office for the Protection of Refugees and Stateless Persons is settled in a panel of 3 judges, accompanied by a clerk and a reporter, who are going to deliberate after the closing of the hearings.

The Court's decision to reject or accept the complaint formulated by the petitioner for the statute of refugee takes place in public session and must be motivated. It will be notified to the applicant by registered letter, within one month, in a language he is presumed to understand.

In case of acceptance of the recourse, the applicant must present to the prefecture in view of obtaining a resident book valid for 10 years. Until the moment of granting the resident book, it will benefit a title of renewable stay, valid for 3 months.

In case the Court confirms the refusal of the French Office for the Protection of Refugees and Stateless Persons, the petitioner has the possibility to formulate a complaint before the State Council in the form of recourse in cassation.

The procedure before the State Council

Against the decision adopted by the National Court for the Right to Asylum, the petitioner for the statute of refugee benefits of the right to formulate recourse in cassation within 2 months since the communication of the decision challenged. This time, the petitioner's presence before the State Council assisted by an attorney is compulsory. In certain conditions, the applicant may benefit of legal assistance, if he submits an express petition to the legal aid office within the State Council.

In this last stage of granting the statute of refugee, the State Council does not retry the matter from the point of view of the facts, but verifies if the decision challenged was legally adopted. First are checked the issued related to competence and procedure, the reasoning of the National Court for the Right to Asylum and the errors occurred in interpreting the legal texts with respect to the statute of refugee. From this viewpoint, in formulating the complaint, the petitioner may invoke the following arguments:

- in spite of the express petition, the applicant was not called for a hearing before the National Court for the Right to Asylum
- the National Court for the Right to Asylum did not reply to the arguments presented by the petitioner during the complaint-solving process
- there were notified errors regarding the date, place etc.

The term for solving the recourse in cassation is of approximately 2-3 years, period during which the applicant does not have the right to stay on the French territory, being possible to be confronted with criminal sanctions. There are two decisions that the State Council may adopt:

- annulment of the decision of the National Court for the Right to Asylum and the recognition of the statute of refugee
- support of the decision of the National Court for the Right to Asylum and final refusal of the statute of refugee.

¹⁵ art. L751-2 of the Code for entry and stay of aliens and for the right of asylum in France.

Conclusion

In conclusion, the analysis of the procedure of granting the statute of refugee in Romania, respectively France, reveals the fact that the national legislations in the matter of the two states greatly fall within the dispositions of the U.N. Convention of year 1951, document to which they are part since year 1991, respectively 1951.

In spite of all efforts made at the international, regional, respectively national level, the regulation of the statute of refugee experiences even today gaps that determine a weak quality of the protection granted for long-term or short-term to the persons driven away from their country of origin as a consequence of the fear of persecution.

We can state that by adopting the U.N. Convention of year 1951 the unitary international system which would allow all in need equal access to international protection was not created as desired.

At the national level is seen the lawmakers tendency to grant a very complex character to the procedure of granting the statute of refugee. For example, at the level of France, the terms for solving the applications for granting the statute of refugee are very long, the final decision being adopted sometimes even after a period of 3 years since the date of submitting the petition. From this point of view, it is worrying the fact that at the national level the applicant for the statute of refugee is not treated as a possible refugee having strong reasons for leaving his country of origin, but firstly as an illegal immigrant, possibly a terrorist or a transnational criminal. Since the efficiency of the international norms for the protection of refugees is materialized in the good functioning of the national systems, the government being those remaining finally responsible for putting into application the conventional dispositions, I consider that the sight of the international community must be directed today towards the ability of the host countries to receive the applicants on their territory, such as to combine the interest of their own citizens with the interest of each individual entering their territory. Often the states find themselves in impossibility to fulfill the simple obligations undertaken by signing the U.N. Convention of year 1951 and moreover in impossibility to reduce the time necessary for adopting the final decision regarding the granting of the statute of refugee. Since these states claim to be overwhelmed by the high number of applicants for the statute of refugee, I consider that at the international level must be amplified the procedure for establishing partnerships both between states as sovereign entities, and between states and the United National High Commission for Refugees.

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