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Romanian Practices of Border Protection in the Case of Persons Crossing the National Border Illegally: From Theory to Practice While Waiting for Admission to the Schengen Area

- **ABSTRACT:** *This study addresses the issue of migration that the European Union has been facing over the past decade. Beginning with the historical evolution of the phenomenon of migration, the current situation in the European Union is presented, as well as the factors that facilitated the emergence thereof. The normative provisions of the European Union are presented, alongside the specific national regulations of Romania regarding asylum and the granting of international protection. Developments in the litigations brought before the Court of Justice are succinctly presented, in addition to the implications of the rulings in the elaboration of new asylum policies, which would expand the participation of European institutions and uniformity in regulation to the detriment of national intervention, according to the principle of subsidiarity.*

THE study presents the penal implications and the crimes that can be committed in connection with the act of crossing the border, but also addresses a sensitive topic, namely that of the Schengen area and the technical fulfilment of admission conditions. In the practical part, empirical aspects of immigration in Romania are presented, as well as the evolution of attempts to cross the border illegally, the evolution caused by the war in Ukraine, and statistics regarding residence permit applications from the past 10 years.

- **KEYWORDS:** Asylum, illegal border crossing, solidarity, sovereignty, Dublin Procedure

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1. Migration, a current problem in the European Union

One of the recurrent themes in public debate in the Member States of the European Union and in the Union institutions is the concept of the migration of people in the European Union. Starting from the reality of a migratory flow directed almost exclusively towards Member States, the public debate has several dimensions: What is the cause of migration? What are the consequences of migration on the comfort and standard of living of the citizens of the destination states? What is the impact of migration on the economy of the Member States and on unemployment? Can illegal migration be a national security risk? How can human rights be protected in a situation of illegal migration? What are the limits of competence of the states and what is the margin of appreciation and disposition of the institutions of the Union? These topics are approached differently depending on the political and institutional positions, as well as the social typology and economic context, but also depending on the cultural traditions and values of the societies in the Member States. The topic of migration is an extremely popular one in public debates in the Member States, especially in the preparation of electoral cycles, and the chimera of stopping/banning migration is strongly supported in political speeches or government measures.

The legal and historical reality is that, looking back, the concept of migration represented in Europe for the last two millennia followed a theme that was cyclically important. Historically, Rome, the eternal city, was conquered and plundered by the Visigoth army led by Alaric in August 410 and, from then until today, European civilisation continued to face such realities, which decisively influenced the juridical-political organisation of the territory of the continent.

Without performing a sociological analysis of the phenomenon of migration in its historical evolution, we can affirm that migration could never be separated from the social, political, and legal context in which it occurred, and the cause that determined the relocation of some communities/peoples or groups of citizens is manifested like a red thread of historical identification by the desire of people to seek a better living, to have access to new resources, to seek new territories, or to live in a better society than the one they come from, one which offers them greater chances and more diverse opportunities.

The development of the supranational construction of the European Union was a factor of interest and attraction for the citizens of third countries, both in terms of access to the internal market and the quality of work and in terms of identifying a suitable space for the development of family life. Freedom of movement and freedom of establishment are today common values of the Member States of the Union for their own citizens, but it should be noted that, at the same time, the success of the internal market has spurred a desire of citizens of third countries

to access this space of freedom, security, and justice through legal means or by trying to force an illegal migration.¹

In the recent past, there were individual intentions of citizens who wanted to enter the territory of the Member States originating from countries where the conditions for ensuring adequate international protection were not met. However, among the causes that determined the migrations of recent date,² we recall the events that started from the Arab Spring, in Tunisia, whereby in the end the dictatorial regimes were removed in both Egypt and Libya. However, the consequences of military confrontations threatened the safety of these nations' citizens, with the safety of their lives, their patrimony, and the political succession dominated by a lack of democratic culture that led to the persecution of those who did not accept the beliefs of those in power. A special approach targets Syria and the civil war in this country, but also the strong flow of migration that manifests itself in the face of the violation of fundamental human rights and freedoms.

Migration has been and is the object of institutional concerns, aimed at respecting human rights in conjunction with the application of national and European legislation on asylum policies.³ To prevent non-compliant conduct by the states, the Court of Justice of the European Union maximised the legal efficiency of the directive by considering its direct effect a genuine indirect sanction to the states.⁴ Any person affected in his legitimate right by the defective or partial implementation or by the non-transposition of the directive into legislation has been afforded the possibility of invoking the direct vertical upward effect of the directive in litigation before a national court.⁵

The migration of citizens coming from third countries is stipulated both in the legislation of the Member States and in the legal regulation of the European Union.⁶ Article 2 Paragraph 2 of the Treaty on the Functioning of the European Union (TFEU) lists the area of freedom, security, and justice as being in the shared competence of the Union with the Member States.⁷ Respecting the principle of subsidiarity, each national state has its own national legislation in terms of establishing the legal rules of immigration, asylum, and return policies in the country of origin, while at the European institutional level other legal regulations have been implemented. Regulation 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application submitted in one of the Member States by a third-country national⁸ was

1 Peers, 2014, pp. 788–794.

2 European Commission, no date.

3 Ispas, 2021b, pp. 359–384.

4 Ispas and Panc, 2019, p. 94.

5 *Ibid.*, pp. 95–97.

6 European Commission, 2022, pp. 90–98.

7 Chalmers, Davies and Monti, 2015, pp. 520–522.

8 Published in the OJEU L 50, 25 February 2003, p. 1.

correlated with the provisions of Regulation 1560/2003,⁹ supplemented by rules that concerned the common procedures regarding protection and the withdrawal of international protection.¹⁰ Regulation No. 604/2013,¹¹ also known as the Dublin III Regulation, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection presented in one of the Member States by a third-country national or a stateless person, includes the elements to be considered when establishing the responsibilities for granting international protection to third-country nationals entering the territory of the Union by land, water, or air, regardless of whether they are refugees. Article 13 of the regulation designates as the state responsible for processing the request, the first state in which the petitioner entered.¹²

During the process of illegal migration to the European Union, in 2015, the European Commission proposed directions of action to strengthen the capacity to deter illegal traffic to the European Union on the Mediterranean Sea, operations to capture boats used in illegal human trafficking through international cooperation.¹³

As demonstrated a different occasion,¹⁴ in the face of the huge flow of more than 1.5 million people in 2015 and more than 1.2 million asylum applications in Member States in 2016,¹⁵ the Union activated, through its institutions, the principle of solidarity as the fundamental principle of the Union and of identifying mechanisms for the relocation of migrants from the frontline states to other states, as well as financial support for those directly affected. Two Decisions¹⁶ were issued by a few states concerning the establishment of provisional measures in the field of international protection for the benefit of Italy and Greece, to support these states to better cope with an emergency characterised by a sudden influx of third-country nationals into the respective Member States (Article 1). The Czech Republic, Hungary, the Slovak Republic, and Romania voted against Decision 2015/1601 in the Council, arguing that human rights and primary law norms would be violated, including by affecting the sovereignty of states. The opposition of Hungary and Slovakia led the Commission to launch infringement procedures against the states for non-compliance with the European rules on asylum in the Member States. The

9 Published in OJEU L 222, 5 September 2003, p. 3.

10 Directive 2013/12 EU, published in OJEU L 141/28, p. 1.

11 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

12 Morgese, 2019, pp. 381–408.

13 European Commission, 2015.

14 Ispas, 2021a.

15 European Parliament, 2017.

16 Decision 2015/1523 and Decision 2015/1601.

Slovak¹⁷ and the Hungarian government¹⁸ filed annulment actions before the Court of Justice of the European Union against the two relocation decisions, citing the lack of proportionality of the measures adopted in the decisions. The two actions were connected, and the Court's verdict was announced in September 2017. By the Court's Decision, the two actions were rejected as unfounded, with the reasoning that the two decisions were adopted in compliance with the primary norms of Union law. The responsible state is, in the interpretation of the Court of Justice of the European Union (CJEU):

The system set up by Decision 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece is based—like the system established by Regulation No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person—on objective criteria rather than on a preference expressed by an applicant for international protection. In particular, the rule concerning the responsibility of the Member State of first entry, laid down in Article 13(1) of that regulation, which is the only rule for determining the responsible Member State laid down in that regulation from which Decision 2015/1601 derogates, is not linked to the applicant's preference for a particular host Member State and does not specifically seek to ensure that there are linguistic, cultural or social ties between the applicant and the responsible Member State.¹⁹

It should be highlighted that most states supported the application of the principle of solidarity by both institutions and Member States.²⁰

The structural modification of FRONTEX and the modification of the Dublin regulations²¹ were measures by which the Union reacted to the immigration crisis. We show that through the adoption of Regulation No. 2016/1624, significant improvements were made regarding the management of the Union's external borders. Article 1 of the Regulation stipulates:

17 C-643/15 *Slovak Republic v. Council of the European Union*, Judgment, 6 September 2017, ECLI:EU:C:2017:631.

18 C-647/15 *Hungary v. Council of the European Union*, 3 December 2015, Joined Cases C-643/15 and C-647/15, Judgment, 6 September 2017, ECLI:EU:C:2017:631.

19 Joined Cases C643/15 and C647/15 *Slovak Republic and Hungary v Council of the European Union*, Judgment, 6 September 2017, ECLI:EU:C:2017:631.

20 Wissing, 2019, pp. 45–90.

21 Benkova, 2017.

This Regulation establishes a European Border and Coast Guard to ensure European integrated border management at the external borders with a view to managing the crossing of the external borders efficiently. This includes addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it.²²

Case C-808/18 was also on the CJEU's docket, in which the Commission asked the Court to rule on the action brought, having as its object the finding of non-fulfilment of obligations, formulated based on Article 258 TFEU, against Hungary. By the decision pronounced in the Grand Chamber, the action is admitted in part, and it is noted that:

Hungary has failed to fulfil its obligations under Article 5, Article 6(1), Article 12(1) and Article 13(1) of Directive 2008/115/EC,²³ under Article 6, Article 24(3), Article 43 and Article 46(5) of Directive 2013/32/EU²⁴ and under Articles 8, 9 and 11 of Directive 2013/33/EU:²⁵

- in providing those applications for international protection from third-country nationals or stateless persons who, arriving from Serbia, wish to access, in its territory, the international protection procedure, may be made only in the transit zones of Röszke (Hungary) and Tompa (Hungary), while adopting a consistent and generalised administrative practice drastically limiting the number of applicants authorised to enter those transit zones daily;
- in establishing a system of systematic detention of applicants for international protection in the transit zones of Röszke and Tompa, without

22 Regulation (EU) No. 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) No. 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No. 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No. 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16 September 2016, pp. 1–76.

23 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

24 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29 June 2013, pp. 60–95.

25 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection OJ L 180, 29 June 2013, pp. 96–116.

- observing the guarantees provided for in Article 24(3) and Article 43 of Directive 2013/32 and Articles 8, 9 and 11 of Directive 2013/33;
- in allowing the removal of all third-country nationals staying illegally in its territory, except for those of them who are suspected of having committed a criminal offence, without observing the procedures and safeguards laid down in Article 5, Article 6(1), Article 12(1) and Article 13(1) of Directive 2008/115;
 - in making the exercise by applicants for international protection who fall within the scope of Article 46(5) of Directive 2013/32 of their right to remain in its territory subject to conditions contrary to EU law;²⁶

The decision of the CJEU determined a series of academic²⁷ or jurisdictional²⁸ reactions, which balanced the need for common rules of the Union, especially when the fundamental values provided for in Article 2 of TEU are involved, with the delimitation of competence between the European Union and the states in a context in which the competences are shared. Romania has consistently positioned itself in the interpretation given by the Court of Justice of the EU, developing procedures to limit illegal migration without violating human rights or international asylum guarantees.

2. National border crossing regulations

The Law No. 122/2006²⁹ contains the legal provisions relating to the legal regime of foreigners who request international protection in Romania, the legal regime of foreigners who are beneficiaries of international protection in Romania, and the specific procedures for granting, terminating, or cancelling international protection. The law also establishes the rules regarding the designation of the Member State responsible for the analysis of the asylum application, as well as the manner in which the specific activities for temporary protection are carried out (Article 1 of the Law).

In the interpretation of specific terms, Romanian legislation refers to the legislative acts of the Union in particular for the implementation of the criteria

26 C-808/18 *Commission v Hungary*, Judgment, 17 december 2020, ECLI:EU:C:2020:1029, para. 317.

27 Małgorzata, 2022, pp. 151–168. In domestic law and the practice of civil courts, there is consistent jurisprudence regarding the return of persons who are illegally on the territory of the Romanian state. See also Civil Decision No. 145/2018, Constanța Court of Appeal, Civil Decision No. 2753/June 12, 2018, Bucharest Court of Appeal.

28 Constitutional Court of Hungary Decision 32/2021 on the joint exercise of powers [Online]. Available at: <https://hunconcourt.hu/decisions/decision-32-2021-on-the-joint-exercise-of-powers/> (Accessed: 29 June 2023).

29 Law 122/2006, published in the Official Gazette, part 1, No. 428 of 26 May 2006.

and mechanisms for determining the Member State responsible for examining an application for international protection presented in one of the Member States by a foreigner – Regulation (EU) No. 604/2013³⁰ (the Dublin Regulation) and Regulation (EU) No. 603/2013³¹ (The Eurodac Regulation).

The concept of mass influx is also defined as ‘Arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided’ (Law No. 122/2006, Article 2(m)).

The principles underlying asylum policies are access to the asylum procedure, non-discrimination, non-refoulement, family unity, the best interests of the child, prioritisation of those with special needs, confidentiality, non-punishment of those who have received asylum status, and the presumption of good faith.³²

In practice, the people who cross the border illegally and request a form of international protection are citizens from third countries who, attracted by the mirage of a good standard of living in European countries, seek to leave their home state and try by any means to reach this land of promise. Most of them know, even before leaving their real domicile, that they cannot in legal terms be granted the refugee status that is recognised upon request regarding a foreign citizen who, following a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinions, or belonging to a certain social group; or to persons who are outside their country of origin and who cannot or, because of this fear, do not want to request the protection of that country, as well as a stateless person who, being outside the country of their habitual residence for the previously mentioned reasons, cannot or, because of this fear, do not want to return to that country, and to whom the causes of exclusion from the recognition of refugee status provided by this law do not apply (Article 23 of Law No. 122/2006).

Nor can the subsidiary protection be applied to them which is granted to a foreign citizen or a stateless person who cannot be accepted as a refugee but for

30 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), published in the Official Journal of the European Union, series L, No. 180 of June 29, 2013.

31 Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) published in the Official Journal of the European Union, series L, No. 180 of 29 June 2013.

32 Arts. 4–16 of Law 122/2006.

whom there are serious fears that, in case of return to the country of origin, he will be exposed to a serious risk, materialising in either being sentenced to the death penalty or the execution of such a penalty, torture, inhuman or degrading treatment or punishment, or a serious, individual threat to life or integrity, as defined in Article 26 of the Law.

Refugee status or subsidiary protection applies under the Law equally to family members of those applying for the status.

The provisions of the law are supplemented by the regulation of the Government Emergency Ordinance (GEO) No. 15 of 2022, which regulates the extraordinary situation of foreign citizens or stateless persons coming from the conflict zone in Ukraine,³³ GEO 194 of 2002 regarding the regime of foreigners in Romania,³⁴ OG No. 44 of 2004 on social integration.³⁵ At the legislative level, Romania is aligned with the highest international and European standards for ensuring a legal³⁶ and organisational framework to guarantee the rights of persons seeking asylum or seeking or benefiting from a form of international protection. There were no actions by the European Commission against Romania and there were no referrals to the CJEU to establish that Romania did not fulfil or improperly fulfilled its obligations as a Member State in the matter of asylum.

The border police are organised according to the provisions of GEO 104/2001.³⁷ Its tasks and responsibilities are stated in Article 21 of the Law: a) it performs supervision and control at the crossing of the state border of Romania and prevents and combats illegal migration and cross-border crime around competence, as well as any other violation of the legal regime of the state border; b) it carries out the control of documents for crossing the state border at crossing points open to international traffic, at the entrance to and exit from the free zones, at the points of low traffic and simplified crossings, or in other places according to the law; c) it supervises, through permanent direct observation, the airspace adjacent to the state border and the territorial sea; d) it ensures the application of

33 Emergency Government Ordinance No. 15 of 2022 regarding the provision of humanitarian support and assistance by the Romanian state to foreign citizens and stateless persons in special situations, originating from the armed conflict zone in Ukraine, published in the Official Gazette, Part I, No. 193 of 27 February 2022, amended and supplemented.

34 Republished in the Official Gazette, part I, No. 421 of 5 June 2008, with amendments.

35 Government Ordinance No. 44 of 29 January 2004, regarding the social integration of foreigners who have acquired international protection or a right of residence in Romania, as well as citizens of the Member States of the European Union, the European Economic Area and citizens of the Swiss Confederation, published in the Official Gazette, Part I, No. 93 of 31 January 2004, with amendments and additions.

36 Constitutional Court of Roumania, 2022, Decision No. 616/2022 regarding the rejection of the exception of unconstitutionality of the provisions of Art. 77(2), of Art. 82(4) and of Art. 83 of the Government Emergency Ordinance No. 194/2002 regarding the regime of foreigners in Romania, published in the Official Gazette, Part I, No. 399 of 9 May 2023 (Accessed: 25 January 2024).

37 Government Emergency Ordinance 104/2001, published in the Official Gazette, part I, No. 351 of 29 June 2001.

the provisions of treaties, agreements, conventions and protocols regarding the state border and border crossing control concluded by Romania with neighbouring states, with other states, and with international or regional organisations; e) it organises and carries out cooperation, in specific fields of activity, with similar bodies of neighbouring states, of other states or communities of states, according to bilateral or multilateral agreements to which Romania is a party; f) it organises actions for the discovery and identification of persons who have violated or about whom data is held that they intend to violate the rules of the legal regime of the state border, as well as other legal provisions established in the competence; g) it participates with border police officers and with technical equipment made available to the Agency in the joint operations/activities organised by the Agency to secure the external borders of the European Union; and h) it carries out activities for the detection of criminal facts and, through the criminal investigation bodies of the judicial police within the Romanian Border Police, carries out investigations in relation to them, according to the law.

3. The provisions of the criminal law regarding crimes aimed at crossing the state border

Considering the specifics of the border activity, we show that, in terms of subject matter, territorial jurisdiction, and criminal procedural norms, the border policeman appointed under the law has the power of a criminal investigation body. In accordance with the provisions of Article 24 of GEO 104/2001, at the state border crossing points, in the border waters, on the inner Danube, the Măcin arm, the maritime Danube, the Danube-Black Sea Canal, the Sulina Canal; in areas located outside the border area, inland maritime waters, and territorial sea, as well as the contiguous area and the exclusive economic zone of Romania in which the Romanian Border Police has jurisdiction, the investigative bodies of the judicial police within the Romanian Border Police carry out the criminal investigation of any crime which is not necessarily given in the competence of other investigative bodies.

The Romanian Penal Code³⁸ regulates the crimes that may occur upon crossing the state border. Article 262 of the Criminal Code criminalises the fraudulent crossing of the state border, stipulating that entering or leaving the country by illegally crossing the state border of Romania is punishable by imprisonment from 6 months to 3 years or a fine. If the deed was committed either for the purpose of evading criminal liability or from the execution of a punishment or an educational, custodial measure, or by a foreigner declared undesirable or

38 Law 286/2009 published in the Official monitor, Part I, No. 510 of 24 July 2009, with subsequent amendments and additions.

who was prohibited in any way from the right to enter or stay in the country, the penalty is imprisonment from 1 to 5 years. For this crime, the attempt is punished with half of the legal classification of the deed. The law also introduces a cause of non-punishment, in the sense that if the crime is committed by a person who has been a victim of human trafficking, they will not be punished.

Article 263 of the criminal code criminalises the trafficking of migrants, defined as the instructing, guiding, transporting, transferring, or harbouring of individuals for the purposes of fraudulently crossing Romania's state border. The offense shall be punishable by no less than 2 and no more than 7 years of imprisonment, but the punishment shall be no less than 3 and no more than 10 years in a case in which it was committed in one of the following ways: a) to obtain material gain, directly or indirectly; b) using means that endanger the life, integrity, or health of the migrant; or c) by subjecting migrants to inhuman or degrading treatment. An attempt shall also be punishable for this offense.

The phenomenon of migration is often linked to the activity of organised crime. For example, generally taking advantage of the vulnerable situation in which people find themselves (victims of trafficking are overwhelmingly women and children, who come from disadvantaged backgrounds characterised by lack of education, lack of a stable source of income, etc.),³⁹ traffickers recruit them to then transport them across borders to richer regions to be exploited.

If trafficking is carried out to a significant extent by misleading the victim,⁴⁰ the trafficker also benefits from the victim's active cooperation in crossing the border and then not leaving the territory of the host countries, even if they live in marginalised circumstances on the edge of subsistence.

Article 264 of the criminal code regulates the constitutive content of the crime of facilitating illegal stay in Romania, defined as the act of a person who facilitates, by any means, the illegal stay on Romanian territory of a person who is victim of a human trafficking crime or of minors or migrants who do not have Romanian citizenship or domicile in Romania. The crime is punishable by imprisonment from 1 to 5 years and the prohibition of the exercise of certain rights, and if the means used constitute a crime by itself, the rules on the competition of crimes are applied.

The punishment limits are increased from 2 to 7 years if the crime was committed either with the aim of obtaining, directly or indirectly, a patrimonial benefit, or by a public official in the exercise of his duties.

Article 265 of the Criminal Code regulates the crime of evading removal measures from the territory of Romania as punishable by imprisonment from 3 months to 2 years or a fine.

³⁹ Manea and Tiugan, 2021, p. 183.

⁴⁰ Moreover, in the national criminal law, misleading the victim is also one of the essential requirements necessary to achieve the objective side of the crime of human trafficking. For more details see Manea, 2022, pp. 238–239.

4. Schengen – between the technical fulfilment of the admission conditions and the political decision at the level of the Member States of the Union

The Schengen area is based on the Schengen Agreement, signed on June 14, 1985, between the Federal Republic of Germany, France, Belgium, Luxembourg, and the Netherlands regarding the elimination of border controls between them. On June 19 1990, the Convention implementing the Schengen Agreement was drawn up and signed, through which controls at the internal borders of the signatory states were eliminated and a single external border was created, especially regarding immigration control.

The Schengen area is made up of 27 Member States, the last states to join being the Principality of Liechtenstein (19 December 2011) and Croatia on 1 January, 2023.

The Convention implementing the Schengen Agreement provides for the following provisions, legislated to facilitate the free movement of people: 1) Elimination of internal border controls. 2) Rules that apply to all persons crossing the external borders of the Union. 3) Enhanced cooperation in the police field. 4) Judicial cooperation through a rapid system of extradition and transfer of the execution of criminal judgments. 5) Creation and development of the Schengen Information System, the Schengen II system being in force.

The accession treaty of Romania and Bulgaria to the European Union provides, in protocol I, Article 4(2), that the provisions of the entire Schengen *acquis* will apply only on the basis of a European decision adopted by the Council in this regard after verifying, in accordance with the Schengen evaluation procedures applicable in the matter,⁴¹ that the conditions necessary for the application of all relevant parts of the *acquis* have been met on the territory of the respective state.⁴² In 2011, it was found that the minimum conditions for membership were met, but the opposition of the Netherlands and Finland blocked admission to the

41 Boicean and Morar, 2023, pp. 36–40.

42 Treaty between the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union), and the Republic of Bulgaria and Romania concerning the accession of the Republic of Bulgaria and Romania to the European Union. OJ L 157, 21 June 2005, pp. 11–395.

Schengen area.⁴³ From 2011 until 2022, the admission was postponed, mainly due to the opposition of the two states.

In response to the criticisms and questions of the Netherlands, in October 2022 an independent mission was carried out to verify the fulfilment by Romania and Bulgaria of the conditions and standards for access to the Schengen area. The conclusion of the report was:

Taking into account all the above the on-site team did not identify any issues as regards the application of the latest developments of the Schengen acquis. This conclusion applies to both Bulgaria and Romania, for the key elements of the Schengen acquis i.e., management of the external borders, police cooperation, return, Schengen Information System, and visa as well as the respect for fundamental rights and the functioning of the authorities that apply the relevant parts of the Schengen acquis. The on-site team therefore considers that Bulgaria and Romania continue to meet the conditions necessary to apply all relevant parts of the Schengen acquis in full.⁴⁴

However, even if the European Parliament and the Commission⁴⁵ unreservedly supported Romania's accession to the Schengen area, unanimity was not achieved in the Council because of the negative votes of Austria and the Netherlands.⁴⁶

Without starting polemical discussions on such issues as national political interests or the possession of control levers, especially regarding the maritime access of products in the Schengen area, we show that the principles of solidarity and loyal cooperation are seriously affected by such decisions. At the same time, the passivity of the Romanian and Bulgarian authorities, who did not refer the unjustified and discriminatory vote by the Netherlands and Austria to the CJEU, raises deep questions. The recent decision to admit Romania and Bulgaria to Schengen regarding air and maritime traffic⁴⁷ is only a minor step in solving an inequity that has tended to become endemic in the European space. The recent concerns of the European Commission to change the rules of access from third countries and asylum procedures do not enjoy a consensus at the European level, and the strengthening of controls at the borders between states within the Schengen area has generated a feeling of lack of trust in the policies common.

43 Consiliul Uniunii Europene, 2011, pp. 2–8.

44 Services of the Commission, 2022, p. 75.

45 European Commission, 16 November 2022, pp. 2–13.

46 Consiliul Uniunii Europene, 2022.

47 Council Decision (EU) 2024/210 of 30 December 2023 on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania, ST/17132/2023/INIT, OJ L, 2024/210, 4 January 2024.

5. Practical aspects of illegal migration in and from Romania

In 2022, 4,965 Ukrainian citizens were detected when crossing/attempting to cross the border illegally to enter Romania, compared to only 16 situations in 2021. A few of the 4,883 Ukrainian citizens who crossed the border illegally requested international protection, of whom 775 requested asylum and 4,108 requested only temporary protection.⁴⁸

In 2022, due to the increase in human traffic through the border crossing points, 26.2% of the activities were carried out at the border with Hungary. In the same year, 5,272 illegal border crossings or attempted crossings were detected, an increase of about 10% compared to the previous year, and 613 migrant trafficking crimes were identified, down by one third compared to the previous year. Among the criminal acts, one third were found at the external border of the Union with Ukraine.⁴⁹

The reports of the Border Police show that there has been a significant decrease in illegal migration at the Romanian border, the number in 2022 being 43,825 foreigners involved in some form of illegal border crossing, of whom 9,944 were detected on the way in, 63,557 on the way out, and 27,524 whose direction of travel towards the western states was interrupted. This may be compared to the figures for 2014, when 3,256 acts of illegal migration were detected,⁵⁰ and for 2018, when 10,551 people were detected in an illegal border crossing action.⁵¹ In 2021, access to Romania was not allowed for a few of 11,232 citizens from third countries, and among criminal acts, those regarding the illegal crossing of the border represented 4,820 acts, an increase of 73% compared to the previous year.⁵²

Referring to illegal immigration routes, there are concerns regarding the major increase in the number of those using the Eastern Mediterranean route, with direct implications for the Western Balkans route, which also involves illegal migration in and through Romania. The doubling of the number of those detected in activities crossing the external border of the Union on the Western Balkans route involves concerted activities of the authorities in Romania, Bulgaria, Hungary, and Slovakia, including those specified in the implementation of Regulation 2019/1896 on the Border Police and the Coast Guard.

In relation to access to the territory of Romania, in 2022 there was a significant decrease in the pressure of illegal immigration at the border with Serbia of almost 60% compared to 2021 as a result of enhanced border security measures and of increased response capacity through Frontex activities. The returns to Serbia

48 Poliția de Frontieră Română, 2023, p. 3.

49 Ibid., pp. 5–9.

50 Poliția de Frontieră Română, 2015, pp. 1–4.

51 Poliția de Frontieră Română, 2020, p. 13.

52 Poliția de Frontieră Română, 2022, pp. 7–8.

based on the bilateral agreement continued, thus stopping at the external border the illegal migration attempts of some citizens whose destination countries were Western European states. From the perspective of the procedures, Romania has, according to the asylum law, the following types of procedures: 1) Regular procedure. 2) Prioritised examination. 3) Fast-track processing. 4) Dublin procedure. 5) Admissibility procedure. 6) Border procedure. 7) Accelerated procedure.

The institutions involved in the asylum procedure are the General Inspectorate for Immigration and the courts within the jurisdiction of the Courts of Appeal at the Border points. Romania has regional holding centres in Timișoara, Șomcuta Mare, Rădăuți, București, and Galați, even if the holding conditions are not at an acceptable level of comfort. In most instances a relocation is carried out from the centre of Timișoara to the other centres for reasons related to the capacity of the space and the current overcrowding in the west. The Border Police has powers to prevent and combat border crime, as well as to prevent illegal immigration and people-trafficking. Even if the data are not completely consistent⁵³ between the relevant institutions, the number of those who were returned to Serbia does not exceed 700 people.

With reference to the Schengen rules for ensuring border security, it should be noted that, according to the Timișoara Border Police, which is responsible for the counties in the west of the country, 6,107 people were prevented from entering the country in 2019, 34,938 in 2020, 75,303 in 2021, and 27,469 in 2022.⁵⁴

6. Statistics regarding requests for international protection and residence permits in Romania

At a statistical level,⁵⁵ we note a constant increase in the total number of citizens from third countries who obtained a first residence permit in Romania. Thus, in 2014, the number of those who received a residence permit was 10,294 people, while in 2019, the number increased to 27,103 people. During the pandemic, there was a decrease in the number of those who received a residence permit, 17,844 in 2020 and 44,783 in 2022. In 2023, as of June 23, 24,460 residence permits has been issued. The increase in the number of permits is correlated with employability in the labour market. From the point of view of the citizenship of those who received a residence permit, if in 2014 the first three positions were occupied by Moldova (1,401 people), Turkey (1,129), and China (980), in 2019 the greatest numbers were citizens of Moldova (3,968), Vietnam (3,892), and Turkey (2,955). In 2022, the most third-country nationals who acquired a residence permit come from Nepal (7,188),

53 Asylum Information Database, Country Report: Romania, pp. 19–22.

54 Ibid., pp. 23–24.

55 Data and statistics related to immigration are made available by the General Inspectorate for Immigration through address 103278 of 23 June 2023, non-public.

Sri Lanka (5,403), and Turkey (5,005); and in the first six months of 2023, 5,599 citizens of Nepal, 4,059 of Sri Lanka, and 1,979 of Bangladesh received residence permits.

By age group and sex, in 2014, 2,594 people under 19 received residence permits, of whom 1,190 were women; 7,363 were between 20 and 69, of whom 2,623 were women; and 337 were over 60, of whom 160 were women. Thus, in 2014, among the people who received a residence permit, almost 40% were women. In 2019, 4,336 people under the age of 19, of whom 2,065 were women; 22,307 people between 20 and 69, of whom 4,978 were women; and 460 people over 60, of whom 185 were women, received residence permits. Thus, in 2019, among the people who received a residence permit, almost 27% were women. In 2022, 4,577 people under the age of 19, of whom 2,110 were women; 39,484 people between 20 and 69, of whom 7,388 were women; and 722 people over 60, of whom 292 were women, received residence permits. Thus, in 2022, among the people who received a residence permit, almost 22% were women. There has thus been a significant decrease over time in the number of women who received a residence permit, one motivation being the field of activity in which the persons who benefited from a residence permit were employed (especially in construction and the hospitality industry).

In the period 2014–2023, 47,096 people altogether applied for international protection in Romania, of whom there were 1,545 people in 2014, 1,260 people in 2015, and 4,815 people in 2017; since 2020, the number of applicants has increased exponentially: 6,155 in 2020, 9,585 in 2021, and 12,355 in 2022. From these statistics, we see that Romania was not an important route of migration to western countries during the peak period of illegal immigration, and from 2021, the increase in the number of citizens seeking international protection is a direct consequence of the armed aggression against Ukraine.

In the 2014–2023 period, 20,124 return decisions were issued, of which there were 1,813 in 2014, 2,568 in 2019, and 4,315 in 2022.

As a result of the war in Ukraine, in 2022 6,252,766 Ukrainian citizens were registered at Romania's borders, a three-fold increase from the values of the previous year, of whom 1,305,390 were children.

7. Conclusion

Migration represents one of the Union's major challenges, with a major impact on its and the Member States' public policies, as well as on the delimitation of powers between the Union and the States. The recent initiatives to establish common policies regarding asylum, the establishment of much tighter deadlines for the settlement of requests, and the strengthening of the participation of Union institutions in the mechanisms in which the States have traditionally exercised their competence can represent endurance tests for the parties involved.

On the one hand, migration is necessary for the Union, as the economy still needs workers to support the growth and stability of production in the Member States. The situation of Romania, with over 3 million workers in legal migration to other Member States, but also with a deficit of over 200,000 employees, is emblematic of the whole philosophy of the Union construction. Romania cannot repatriate its citizens in gainful activities, as salaries are not at a level that is competitive with those obtained in more economically developed states. Romania is becoming a destination state for citizens from Asian states with extremely low standards of living. Concurrently, for those who resort to illegal migration, Romania does not represent a destination challenge, as it is constantly bypassed by migration flows on the Western Balkans routes.

On the other hand, the recent decision of the CJEU against Hungary might mark the beginning of a new asylum policy and European strategies on migration by restricting the intervention of Member States in the admission policies of requests for international protection. The challenges will be accentuated by the rise of nationalist political manifestations, and further developments may be unpredictable. The idea of unity and solidarity can be compromised from within, as positions lacking viable arguments regarding the expansion of the Schengen area can have the consequence of decreasing the feeling of loyal cooperation between states. During this time, the Union cannot turn into a fortress with walls at all external borders without losing its openness to citizens and to collaboration with states that face economic and social difficulties.

Having analysed Romania's balanced position of strengthening its border control capabilities and opening up for migrant workers, I conclude that the Romanian model can serve as a reference for common policies regarding asylum and control at external borders.

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